

Bankruptcy (Scotland) Act 1985

CHAPTER 66

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ELIZABETH II



Bankruptcy (Scotland) Act 1985

1985 CHAPTER 66

An Act to reform the law of Scotland relating to sequestration and personal insolvency; and for connected purposes. [30th October 1985]

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:—

Administration of bankruptcy

1.—(1) The Accountant in Bankruptcy shall have the following Accountant in general functions in the administration of sequestration and Bankruptcy. 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 (in this Act referred to as the “ list of interim trustees ”) from which interim trustees shall be appointed ;
- (c) the maintenance of a register (in this Act referred to as the “ register of insolvencies ”), in a form prescribed

by the Court of Session by act of sederunt, 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 5 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 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 in Bankruptcy's functions under this Act.

(2) The Accountant of Court shall be 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 court which, 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 reasonable grounds 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 the debtor, in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs ; or
- (b) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the permanent trustee in respect of the debtor's assets, business or financial affairs,

he shall report the matter to the Lord Advocate.

(5) The Accountant in Bankruptcy shall—

- (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.

(6) The power of the Secretary of State to regulate fees under section 2 of the Courts of Law Fees (Scotland) Act 1895 shall include power to prescribe the fees payable in respect of any matter relating to the functions of the Accountant in Bankruptcy. 1895 c. 14.

2.—(1) In every sequestration there shall be appointed under section 13 of this Act an interim trustee whose general functions shall be— Interim trustee.

- (a) to safeguard the debtor's estate pending the appointment of a permanent trustee 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 of interim trustees if, but only if, he—

- (a) resides within the jurisdiction of the Court of Session ; and
- (b) is qualified to act as an insolvency practitioner.

(3) The Accountant in Bankruptcy shall remove a person's name from the list of interim trustees—

- (a) at the person's own request ;
- (b) if it appears to the Accountant in Bankruptcy that the person has ceased to meet either of the requirements mentioned in subsection (2) above ; or
- (c) if, on an application by the Accountant in Bankruptcy to the sheriff for 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 physically or mentally incapacitated from acting as interim trustee :

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 :

Provided also that, until the coming into force of section 2

1985 c. 65.

of the Insolvency Act 1985 (qualifications of insolvency practitioners), paragraph (b) above shall have effect as if at the end were added the words “or is not a fit and proper person to act as an interim trustee”.

(4) Any person aggrieved by the exclusion or removal of his name from the list of interim trustees may appeal against that exclusion or removal to the Court of Session.

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 ascertain the reasons for the debtor's insolvency and the circumstances surrounding it ;
- (d) to ascertain the state of the debtor's liabilities and assets ;
- (e) to maintain a sederunt book during his term of office for the purpose of providing an accurate record of the sequestration process ;
- (f) 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
- (g) 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 reasonable grounds to suspect that an offence has been committed in relation to a sequestration—

- (a) by the debtor in respect of his assets, his dealings with them or his conduct in relation to his business or financial affairs ; or
- (b) by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the permanent trustee in respect of the debtor's assets, business or financial affairs,

he shall report the matter to the Accountant in Bankruptcy.

(4) A report under subsection (3) above shall be absolutely privileged.

4. In any sequestration (other than one to which Schedule 2 Com- to this Act applies) commissioners, whose general functions shall missioners. be to supervise the intrusions of the permanent trustee with the sequestrated estate and to advise him, may be elected in accordance with section 30 of this Act.

Petitions for sequestration

5.—(1) The estate of a debtor may be sequestrated in accordance with the provisions of this Act. Sequestration of the estate of living or deceased debtor.

(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.

(4) In this Act “qualified creditor” means a creditor who, at the date of the presentation of the petition, is a creditor of the debtor in respect of liquid or illiquid debts (other than contingent or future debts), whether secured or unsecured, which amount (or of one such debt which amounts) to not less than £750 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 £750 or such sum as may be prescribed.

(5) Paragraphs 1(1) and (3), 2(1)(a) and (2) 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 in accordance with this Act so far as circumstances will permit.

(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.

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.

1907 c. 24.

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

1985 c. 6.

- (a) a company registered under the Companies Act 1985 or under the former Companies Acts (within the meaning of that Act) ; 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 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 or 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 the body is apparently insolvent.

(7) The application of this Act to the sequestration of the estate of a limited partnership shall be subject to such modifications as may be prescribed.

(8) 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.

7.—(1) A debtor's apparent insolvency shall be constituted (or, where he is already apparently insolvent, constituted anew) when— Meaning of
apparent
insolvency.

- (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 ; or

(d) a creditor of the debtor, in respect of a liquid debt which amounts (or liquid debts which in aggregate amount) to not less than £750 or such sum as may be prescribed, has served on the debtor, by personal service by an officer of court, a demand in the prescribed form requiring him either to pay the debt (or debts) or to find security for its (or their) payment, and within 3 weeks after the date of service of the demand the debtor has not—

(i) complied with the demand ; or

(ii) intimated to the creditor, by recorded delivery, that he denies that there is a debt or that the sum claimed by the creditor as the debt is immediately payable.

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

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

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

(3) The apparent insolvency of—

(a) a partnership shall be constituted either in accordance with the foregoing provisions of this section or if any of the partners is apparently insolvent for a debt of the partnership ;

(b) an unincorporated body shall 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.

(4) Notwithstanding subsection (2) of section 6 of this Act, the apparent insolvency of an entity such as is mentioned in para-

graph (a) or (b) of that subsection may be constituted (or as the case may be constituted anew) under subsection (1) above; and any reference in the foregoing provisions of this section to a debtor shall, except where the context otherwise requires, be construed as including a reference to such an entity.

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—

Further provisions relating to presentation of petitions.

(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) in a case where the apparent insolvency of the debtor was constituted within 4 months before his death, at any time;

(ii) in any other case (whether or not apparent insolvency has been 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 enactment or rule of law relating to the limitation of actions in any part of the United Kingdom.

(6) Where before sequestration is awarded it becomes apparent that a petitioning or concurring creditor was ineligible so to petition or concur he shall withdraw, or as the case may be withdraw from, the petition but another creditor may be sisted in his place.

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 entity which may be sequestrated by virtue of 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 at any time in the year immediately preceding the date of presentation of the petition or the date of death, as the case may be.

Concurrent proceedings for sequestration or analogous remedy.

10.—(1) If, in the course of sequestration proceedings, the petitioner for sequestration, the debtor or a creditor concurring in the petition (the petition in such proceedings being hereafter in this section referred to as the “instant petition”) is, or becomes, aware that—

- (a) another petition for sequestration of the debtor’s estate is before a court or such sequestration has been awarded ; or
- (b) 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
- (c) a petition is before a court for the winding up of the debtor under Part XX of the Companies Act 1985 or the debtor has been wound up under the said Part XX ; or
- (d) 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 as soon as possible bring that fact to the notice of the court to which the instant petition was presented.

(2) If a petitioner (not being the debtor) or a creditor concurring in the petition 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 and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(3) Where in the course of sequestration proceedings any of the circumstances mentioned in paragraph (a), (b) or (c) of subsection (1) above exists then—

(a) the court to which the instant petition was presented may, on its own motion or at the instance of the debtor or any creditor or other person having an interest, allow that petition to proceed or may sist or dismiss it; or

(b) without prejudice to paragraph (a) above, the Court of Session may, on its own motion or on application by the debtor or any creditor or other person having an interest, direct the sheriff before whom the instant petition is pending, or the court before which the other petition is pending, to sist or dismiss the instant petition or, as the case may be, the other petition, or may order 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.

(5) In this section “analogous remedy” means a bankruptcy order under the Bankruptcy Act 1914 or under the Insolvency Act 1985 or an administration order under section 112 of the County Courts Act 1984 in England and Wales or under any enactment having the like effect in Northern Ireland or a remedy analogous to either of the aforesaid remedies, or to sequestration, in any other country.

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

Creditor's oath.

of this Act or under that subsection as applied by section 6(8) 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 the oath contains any error or has omitted any fact, the court to which the petition for sequestration was presented may, at any time before sequestration is awarded, 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 an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt ; and a petitioning creditor shall in addition produce such evidence as is available to him to show the apparent insolvency of the debtor.

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 competently be 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 to appear before it on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation, 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, 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.

13.—(1) An interim trustee shall be appointed by the court from the list of interim trustees on sequestration being awarded or as soon as may be thereafter:

Appointment
and
resignation of
interim
trustee.

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 list of interim trustees to act in his place; and an interim trustee shall not otherwise resign office.

(3) Without prejudice to section 1(3) of this Act or to subsection (4) below, where the court is satisfied that an interim trustee—

(a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever); or

(b) has had his name removed from the list of interim trustees; or

(c) has so conducted himself that he should no longer continue to act in the sequestration,

the court, on the application of the debtor, a creditor, the Accountant in Bankruptcy or, in respect of paragraph (a) above, the interim trustee, shall appoint another interim trustee from that list to act in his place.

(4) Where under section 1(3) of this Act the court removes an interim trustee from office, the court, on the application of the Accountant in Bankruptcy, shall appoint another interim trustee from the list of interim trustees to act in his place.

(5) Subject to subsection (6) below, no one shall act as interim trustee in a sequestration if he would, by virtue of section 24(2) of this Act, be disqualified from acting as permanent trustee in that sequestration; but where an interim trustee is, by virtue of this subsection, prohibited from so acting he shall forthwith make an application under subsection (3)(a) above.

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

(7) Notwithstanding the provisions of paragraph (a) of section 18(3) of this Act, the court may, if requested to do so in the petition for sequestration, empower the interim trustee to act as is mentioned in that paragraph.

(8) An order of the court making an appointment under this section shall be appealable only by the debtor, a creditor, the Accountant in Bankruptcy or the appointee and only on the ground that the person appointed is unable to act as mentioned in subsection (3)(a) above, or is not on the list of interim trustees:

Provided that such an order under subsection (3) above may also be appealed against by the displaced interim trustee on the ground that the court should not have been satisfied as is mentioned in that subsection.

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

Registration of court order. 14.—(1) The clerk of the court shall forthwith after the date of sequestration send—

(a) a certified copy of the relevant court 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 sequestration 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 49 of this Act.

- (3) The effect mentioned in subsection (2) above shall expire—
- (a) on the recording under section 15(5)(a) or 17(8)(a) of, or by virtue of paragraph 11 of Schedule 4 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 the period of 3 years beginning with the date of sequestration.

(4) The permanent trustee, if not discharged, shall before the end of the period of 3 years mentioned in subsection (3)(b) above send a memorandum in a form prescribed by the Court of Session 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 3 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.

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.

Further provisions relating to award of sequestration.

(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, the petitioner or a creditor concurring in the petition for sequestration may appeal against the order within 14 days of the date of making of the order.

(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—

- (a) on the final determination or abandonment of any appeal under subsection (3) above in relation to the petition, or if there is no such appeal on the expiry of the 14 days mentioned in that subsection, send 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) forthwith send 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 process of sequestration shall not fall asleep.

(8) Where a debtor learns, whether before or after the date of sequestration, that he may derive benefit from another estate, he shall as soon as practicable after that date inform—

- (a) the permanent trustee or, if the permanent trustee has not yet been elected or appointed, the interim trustee of that fact ; and
- (b) the person who is administering that other estate of the sequestration.

(9) If the debtor fails to comply with subsection (8) above, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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, 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, the interim trustee or permanent trustee and the Accountant in Bankruptcy, 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) Subject to section 41(1)(b) of this Act, 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 (subject to section 17(6) of this Act) 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 person entitled to present or, as the case may be, lodge answers to a petition under this section may be sisted in his place.

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 value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country ; or

(c) 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 sequestration of the debtor's estate have been granted, the Court may, after such intimation as it considers necessary, recall an award whether or not the one in respect of which the petition for recall was presented.

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

(a) shall make provision for the payment of the outlays and remuneration of the interim trustee and permanent

trustee by directing that such payment shall be made out of the debtor's estate or by requiring 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) without prejudice to subsection (7) below, may direct that payment of the expenses of a creditor who was a petitioner, or concurred in the petition, for sequestration shall be made out of the debtor's estate ;
- (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 caused by the presentation of the petition for sequestration or the submission of a claim under section 22 or 48 of this Act ;
- (b) invalidate any transaction entered into before such recall by the interim trustee or permanent trustee with a person acting in good faith.

(6) Where the Court considers that it is inappropriate to recall or to refuse to recall an award of sequestration forthwith, it may order that the proceedings in the sequestration shall continue but shall be subject to such conditions as it may think fit.

(7) The Court may make such order in relation to the expenses in a petition for recall as it thinks fit.

(8) The clerk of court shall send—

- (a) a certified copy of any 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 any order recalling or refusing to recall an award of sequestration, or of any order under section 41(1)(b)(ii) of this Act, to—
 - (i) the Accountant in Bankruptcy ; and
 - (ii) the permanent trustee (if any) who shall insert it in the sederunt book.

Period between award of sequestration and statutory meeting of creditors

18.—(1) The interim trustee may give general or particular directions to the debtor relating to the management of the debtor's estate. Interim
preservation
of 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 the debtor's 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 ;
- (f) effect or maintain insurance policies in respect of the business or property of the debtor ;
- (g) close down the debtor's business.

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

- (a) empower the interim trustee to—
 - (i) carry on any business of the debtor ;
 - (ii) borrow money,
 in so far as it is necessary for the trustee to do so to safeguard the debtor's 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 court, on an application by the debtor on the grounds that a direction under subsection (1) above is unreasonable, may—

- (a) if it considers the direction to be unreasonable, set aside the direction ; and
- (b) in any event, give such directions to the debtor regarding the management of his estate as it considers appropriate ;

but, subject to any interim order of the court, the debtor shall comply with the direction appealed against pending the final determination of the appeal.

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

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

(i) a direction under subsection (1) or (4)(b) above ;

or

(ii) a requirement under subsection (2)(a), (c) or (e) above ; or

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

(6) A person convicted of an offence under subsection (5) above shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum or—

(i) to imprisonment for a term not exceeding 3 months ; or

(ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding 6 months,

or (in the case of either sub-paragraph) to both such fine and such imprisonment ; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years or to both.

Debtor's list
of assets and
liabilities.

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 list of the debtor's assets and liabilities in the prescribed form.

(2) If without reasonable excuse the debtor—

(a) fails to deliver in accordance with subsection (1) above a list of assets and liabilities to the interim trustee ; or

(b) fails to disclose any material fact in it ; or

(c) makes a material misstatement in it,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

20.—(1) On receipt of the debtor's list of assets and liabilities, the interim trustee shall prepare a preliminary statement of the debtor's affairs so far as within the knowledge of the interim trustee and shall indicate in the statement whether, in his opinion, the debtor's assets are unlikely to be sufficient to pay any dividend whatsoever in respect of the debts mentioned in paragraphs (e) to (h) of section 51(1) of this Act. Trustee's duties on receipt of list of assets and liabilities.

(2) The interim trustee shall, not later than 4 days before the date fixed for the statutory meeting, send to the Accountant in Bankruptcy—

- (a) a copy of the debtor's list of assets and liabilities ; and
- (b) a copy of the preliminary statement of the debtor's affairs ; and
- (c) written comments by the interim trustee indicating what in his opinion are the causes of the insolvency and to what extent the conduct of the debtor may have contributed to the insolvency.

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

(4) The interim trustee may request—

- (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 debtor's spouse or any other person who the interim trustee believes can give such information to give that information,

and if the interim trustee considers it necessary he may apply to the sheriff for an order requiring the debtor, spouse or other person to appear before the sheriff for private examination.

(5) Subsections (2) to (4) of section 44 and sections 46 and 47 of this Act shall apply, subject to any necessary modifications, in respect of private examination under subsection (4) above as they apply in respect of private examination under the said subsection (2).

Statutory meeting of creditors and confirmation of permanent trustee

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. Calling of statutory meeting.

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

- (a) every creditor known to him ; and

(b) the Accountancy in Bankruptcy, of the date, time and place of the meeting, and shall in the notification to creditors invite the submission of such claims as have not already been submitted and inform them of his duties under section 23(3) and (5) of this Act.

(3) The creditors may continue the statutory meeting to a date not later than 7 days after 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.

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) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt :

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 the creditor resides or has a place of business and if no notification has been given to that creditor under section 21(2) of this Act, 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 who has produced a statement of claim in accordance with subsection (2) above may at any time before the statutory meeting produce in place of that statement of claim another such statement of claim specifying a different amount for his claim.

(5) If a creditor produces under this section a statement of claim, account, 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, account, 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, account, voucher or other evidence was false ; and

(ii) failed as soon as practicable after acquiring such knowledge to report it to the interim trustee or permanent trustee.

(6) A creditor may, in such circumstances as may be prescribed, 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 the document and keep a record of it stating the date when it was produced to him, and, if requested by the sender, shall return it (if it is not a statement of claim) to him.

(8) The submission of a claim under this section shall bar the effect of any enactment or rule of law relating to the limitation of actions in any part of 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.

(10) A person convicted of an offence under subsection (5) above shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum or—

(i) to imprisonment for a term not exceeding 3 months ; or

(ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding 6 months,

or (in the case of either sub-paragraph) to both such fine and such imprisonment ; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years or to both.

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, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration ;

Proceedings at statutory meeting before election of permanent trustee.

- (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 section 24(3) of this Act, determine the entitlement of a creditor to vote at the statutory meeting.

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

- (a) shall make the debtor's list of assets and liabilities and the preliminary statement under section 20(1) of this Act available for inspection;
- (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, business or financial affairs or his conduct in relation thereto;
- (c) shall, after considering any such representations as are mentioned in paragraph (b) above, indicate whether, in his opinion, the debtor's assets are unlikely to be sufficient as mentioned in section 20(1) of this Act; and
- (d) shall prepare (either at or as soon as possible after the statutory meeting), a final statement of the debtor's affairs.

(4) Where the interim trustee has indicated under subsection (3)(c) above that, in his opinion, the debtor's assets are unlikely to be sufficient as mentioned in section 20(1) of this Act, he shall forthwith make a report of the proceedings at the statutory meeting to the sheriff who shall thereupon appoint the interim trustee as the permanent trustee; and the provisions of this Act shall have effect as regards the sequestration subject to such modifications, and with such further provisions, as are set out in Schedule 2 to this Act.

(5) The interim trustee shall as soon as possible after the statutory meeting send a copy of the statement prepared by him under subsection (3)(d) above, together with an intimation as to whether or not he intends to apply under section 27(1) of this Act for a certificate of discharge, to—

- (a) every creditor known to him; and
- (b) the Accountant in Bankruptcy.

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 the permanent trustee.

(2) None of the following persons shall be eligible for election as permanent trustee, nor shall anyone who becomes such a person after having been elected as permanent trustee be qualified to continue to act as permanent trustee—

- (a) the debtor ;
- (b) a person who is not qualified to act as an insolvency practitioner or who, though qualified to act as an insolvency practitioner, is not qualified to act as such in relation to 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.

(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 forthwith—

- (a) so notify the Accountant in Bankruptcy ; and
- (b) report the proceedings at the statutory meeting to the sheriff, who shall thereupon appoint the interim trustee as the permanent trustee.

(5) Where subsection (4) above applies, the provisions of this Act shall have effect as regards the sequestration subject to such modifications, and with such further provisions, as are set out in Schedule 2 to this Act.

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

- (a) the interim trustee shall forthwith make a report of the proceedings at the statutory meeting to the sheriff ; and
- (b) the debtor, a creditor, the interim trustee, the permanent trustee or the Accountant in Bankruptcy may, within 4 days after the statutory meeting, object to any matter connected with the election ; and such objection shall be by summary application to the sheriff, specifying the grounds on which the objection is taken.

Confirmation
of permanent
trustee.

(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 the sheriff shall confirm his election and the sheriff clerk shall issue to him an act and warrant in a form prescribed by the Court of Session by act of sederunt and send a copy of the act and warrant to the Accountant in Bankruptcy.

(3) If there is a timeous objection under subsection (1)(b) above, the sheriff shall forthwith give parties an opportunity to be heard thereon and shall 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—

- (a) insert a copy of 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.

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 list of assets and liabilities, of the statement prepared under section 23(3)(d), and of the written comments sent under section 20(2)(c) of this Act) and shall thereupon cease to act in the sequestration.

(2) Within 3 months of the confirmation in office of the permanent trustee, the interim trustee shall—

- (a) submit to the Accountant in Bankruptcy—
 - (i) his accounts of his intromissions (if any) with the debtor's estate; and
 - (ii) a claim for outlays reasonably incurred, and for remuneration for work reasonably undertaken, by him; and

Provisions relating to termination of interim trustee's functions.

(b) send to the permanent trustee (unless the interim trustee has himself become the permanent trustee), a copy of what is submitted to the Accountant in Bankruptcy under paragraph (a) above.

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

(a) shall—

(i) audit the accounts ; and

(ii) issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee ; and

(b) shall send a copy of—

(i) the said determination to the interim trustee (except where the interim trustee has himself become the permanent trustee) ; and

(ii) the interim trustee's audited accounts and of the said determination to the permanent trustee, who shall insert the copies in the sederunt book.

(4) The interim trustee, the permanent trustee, the debtor or any creditor may appeal to the sheriff against a determination under subsection (3)(a)(ii) 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(2)(c) of this Act.

27.—(1) On receiving a copy of the Accountant in Bankruptcy's determination sent under subsection (3)(b)(i) of section 26 of this Act the interim trustee may apply to him for a certificate of discharge. Discharge of interim trustee.

(2) The interim trustee shall send notice of an application under subsection (1) above to the debtor and to the permanent trustee and shall inform the debtor—

(a) that he, the permanent trustee or any creditor may make written representations relating to the application to the Accountant in Bankruptcy within a period of 14 days after such notification ;

(b) that the audited accounts of his intromissions (if any) with the debtor's estate are available for inspection at the office of the interim trustee and that a copy of those accounts has been sent to the permanent trustee for insertion in the sederunt book ; and

(c) of the effect mentioned in subsection (5) below.

(3) On the expiry of the period mentioned in subsection (2)(a) above the Accountant in Bankruptcy, after considering any representations duly made to him, shall—

- (a) grant or refuse to grant the certificate of discharge ; and
- (b) notify (in addition to the interim trustee) the debtor, the permanent trustee, and all creditors who have made such representations, accordingly.

(4) The interim trustee, the permanent trustee, the debtor or any creditor who has made representations under subsection (2)(a) above may, within 14 days after the issuing of the determination under subsection (3) above, appeal therefrom to the sheriff and if the sheriff determines that a certificate of discharge which has been refused should be granted he shall order the Accountant in Bankruptcy to grant it ; 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 under this section by the Accountant in Bankruptcy shall have the effect of discharging the interim 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 interim trustee in exercising the functions conferred on him by this Act.

(6) Where a certificate of discharge is granted under this section, the permanent trustee shall make an appropriate entry in the sederunt book.

(7) Where the interim trustee has died, resigned office or been removed from office, then once the accounts of his intromissions (if any) with the debtor's estate are or have been submitted to and audited by the Accountant in Bankruptcy, the Accountant in Bankruptcy shall issue a determination fixing the amount of the outlays and remuneration payable to the interim trustee and the provisions of subsection (4) of section 26 of this Act and the foregoing provisions of this section shall, subject to any necessary modifications, apply in relation to that interim trustee or, if he has died, to his executor as they apply in relation to an interim trustee receiving a copy of such a determination under subsection (3)(b)(i) of that section.

Replacement of permanent trustee

28.—(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

Resignation
and death of
permanent
trustee.

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) Where the sheriff grants an application under paragraph (b) of subsection (1) above—

- (a) except where paragraph (b) below applies, the commissioners, or if there are no commissioners, the Accountant in Bankruptcy, shall call a meeting of the creditors, to be held not more than 28 days after the permanent trustee has resigned, for the election by them of a new permanent trustee ;
- (b) if the application has been granted subject to the election of a new permanent trustee, the resigning permanent trustee shall himself call a meeting of the creditors, to be held not more than 28 days after the granting of the application, for the purpose referred to in paragraph (a) above.

(3) Where the commissioners become, or if there are no commissioners the Accountant in Bankruptcy becomes, aware that the permanent trustee has died, they or as the case may be the Accountant in Bankruptcy shall as soon as practicable after becoming so aware call a meeting of creditors for the election by the creditors of a new permanent trustee.

(4) The foregoing provisions of this Act relating to the election and confirmation in office of the permanent trustee shall, subject to any necessary modifications, apply in relation to the election and confirmation in office of a new permanent trustee in pursuance of subsection (1), (2) or (3) above.

(5) Where no new permanent trustee is elected in pursuance of subsection (2) or (3) above, a person nominated by the Accountant in Bankruptcy from the list of interim trustees, not being a person ineligible for election as permanent trustee under section 24(2) of this Act, shall forthwith apply to the sheriff for appointment as permanent trustee, and the sheriff shall thereupon so appoint him ; and the provisions of this Act shall have effect as regards the sequestration subject to such modifications and with such further provisions as are set out in Schedule 2 to this Act.

(6) The new permanent trustee may require—

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

if there are no commissioners, to the Accountant in Bankruptcy, and the commissioners or the Accountant in Bankruptcy shall issue a determination fixing the amount of the outlays and remuneration payable to the trustee or representatives in accordance with section 53 of this Act.

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

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

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

Removal of permanent trustee and trustee not acting.

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

- (a) 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 if they also elect forthwith a new permanent trustee; or
- (b) without prejudice to section 1(3) of this Act, by order of the sheriff, on the application of—
 - (i) the Accountant in Bankruptcy;
 - (ii) the commissioners; or
 - (iii) a person representing not less than one quarter in value of the creditors,

if the sheriff is satisfied that cause has been shown on the basis of circumstances other than those to which subsection (9) below applies.

(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, the commissioners 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 under section 1(3) of this Act 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, to be held not more than 28 days after such removal, for the election by them of a new permanent trustee.

(6) Without prejudice to section 1(3) of this Act, where the sheriff is satisfied of any of the circumstances to which subsection (9) below applies he may, on the application of a commissioner, the debtor, a creditor or the Accountant in Bankruptcy, and after such intimation as the sheriff considers necessary—

- (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, to be held not more than 28 days after such declaration, 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 (5) to (7) of section 28 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

(9) The circumstances to which this subsection applies are that the permanent trustee—

- (a) is unable to act (whether by, under or by virtue of a provision of this Act or from any other cause whatsoever other than death) ; or
- (b) has so conducted himself that he should no longer continue to act in the sequestration.

Election, resignation and removal of commissioners

30.—(1) 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, from among the creditors or their mandatories, elect one or more commissioners (or new or additional commissioners) ; but not more than 5 commissioners shall hold office in any sequestration at any one time.

Election, resignation and removal of commissioners.

(2) None of the following persons shall be eligible for election as a commissioner, nor shall anyone who becomes such a person after having been elected as a commissioner be entitled to continue to act as a commissioner—

- (a) any person mentioned in paragraph (a) or (c) of section 24(2) of this Act as not being eligible for election ;
- (b) a person who is an associate of the debtor or of 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.

Vesting of estate in permanent trustee

Vesting of
estate at date
of
sequestration.

31.—(1) Subject to section 33 of this Act, the whole estate of the debtor shall vest as at the date of sequestration in the permanent trustee for the benefit of the creditors ; and—

- (a) the estate shall so vest by virtue of the act and warrant issued on confirmation of the permanent trustee's appointment ; and
- (b) the act and warrant shall, in respect of the heritable estate in Scotland of the debtor, have the same effect as if a decree of adjudication in implement of sale, as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion, had been pronounced in favour of the permanent trustee.

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

(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 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 made intimation of its assignation to him, as the case may be.

(5) 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.

(6) 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.

(7) 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.

(8) In subsection (1) above the “ whole estate of the debtor ” means his whole estate at the date of sequestration, wherever situated, including—

- (a) any income or estate vesting in the debtor on that date ; and
- (b) the capacity to exercise and to take proceedings for exercising, all such powers in, over, or in respect of any property as might have been exercised by the debtor for his own benefit as at, or on, the date of sequestration or might be exercised on a relevant date (within the meaning of section 32(10) of this Act).

32.—(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. Vesting of estate, and dealings of debtor, after sequestration.

(2) The sheriff, on the application of the permanent trustee, may, after having regard to all the circumstances, determine a suitable amount to allow for—

- (a) aliment for the debtor ; and

(b) the debtor's relevant obligations ;

and if the debtor's income is in excess of the total amount so allowed the sheriff shall fix the amount of the excess and order it to be paid to the permanent trustee.

(3) The debtor's relevant obligations referred to in paragraph (b) of subsection (2) above are—

1985 c. 37.

(a) any obligation of aliment owed by him (" obligation of aliment " having the same meaning as in the Family Law (Scotland) Act 1985) ;

(b) any obligation of his to make a periodical allowance to a former spouse ;

but any amount allowed under that subsection for the relevant obligations need not be sufficient for compliance with a subsisting order or agreement as regards such aliment or periodical allowance.

(4) 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.

(5) Diligence in respect of a debt or obligation of which the debtor would be discharged under section 55 of this Act were he discharged under section 54 thereof shall not be competent against income vesting in him under subsection (1) above.

(6) 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 a copy of the act and warrant certified by the sheriff clerk 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.

(7) 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 and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

(8) Subject to subsection (9) below, any dealing of or with the debtor relating to his estate vested in the permanent trustee under section 31 of this Act shall be of no effect in a question with the permanent trustee.

(9) Subsection (8) 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 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 and had at that time no reason to believe that the debtor's estate had been sequestrated or was the subject of sequestration proceedings.

(10) 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.

Limitations on vesting.

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

- (a) property exempted from pouncing for the purpose of protecting the debtor and his family ;
- (b) property held on trust by the debtor for any other person.

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

(3) Sections 31 and 32 of this Act are without prejudice to the right of any secured creditor which is preferable to the rights of the permanent trustee.

Safeguarding of interests of creditors of insolvent persons

Gratuitous alienations.

34.—(1) Where this subsection applies, an alienation by a debtor shall be challengeable by—

- (a) any creditor who is a creditor by virtue of a debt incurred on or before the date of sequestration, or before the granting of the trust deed or the debtor's death, as the case may be ; or
- (b) the permanent trustee, the trustee acting under the trust deed or the judicial factor, as the case may be.

(2) Subsection (1) above applies where—

- (a) by the alienation, whether before or after the coming into force of this section, any of the debtor's property has been transferred 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 (other than, in the case of a natural person, after his death) ; or

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

(iii) he has died and within 12 months after his death, his estate has been sequestrated ; or

(iv) he has died and within the said 12 months, a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 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.

(3) For the purposes of paragraph (c) of subsection (2) 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 is an associate of 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.

(4) On a challenge being brought under subsection (1) 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, but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—

- (a) that immediately, or at any other time, after the alienation the debtor's assets were greater than his liabilities; or
- (b) that the alienation was made for adequate consideration; or
- (c) that the alienation—
 - (i) was a birthday, Christmas or other conventional gift; or
 - (ii) was a gift made, for a charitable purpose, to a person who is not an associate of the debtor, which having regard to all the circumstances, it was reasonable for the debtor to make:

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

(5) In subsection (4) above, "charitable purpose" means any charitable, benevolent or philanthropic purpose whether or not it is charitable within the meaning of any rule of law.

(6) 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.

(7) This section is without prejudice to the operation of section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 c. 26. 1880 (policy of assurance may be effected in trust for spouse, future spouse and children).

(8) A permanent trustee, the trustee acting under a protected trust deed and a judicial factor appointed under section

1889 c. 39.

11A of the Judicial Factors (Scotland) Act 1889 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.

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

35.—(1) This section applies where—

- (a) a court has made an order, whether before or after the coming into force of this section, under section 5 of the Divorce (Scotland) Act 1976 or section 8(2) of the Family Law (Scotland) Act 1985, for the payment by a debtor of a capital sum or under the said section 8(2) for the transfer of property by him ;
- (b) on the date of the making of the order the debtor was absolutely insolvent or was rendered so by implementation of the order ; and
- (c) within 5 years after the making of the order—
 - (i) the debtor's estate has been sequestrated other than after his death ; or
 - (ii) he has granted a trust deed which has (whether or not within the 5 years) become a protected trust deed ; or
 - (iii) he has died and, within 12 months after his death, his estate has been sequestrated ; or
 - (iv) he has died and, within the said 12 months, a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer his estate.

(2) Where this section applies, the court, on an application brought by the permanent trustee, the trustee acting under the trust deed or the judicial factor, may make an order for recall of the order made under the said section 5 or 8(2) and for the repayment to the applicant of the whole or part of any sum already paid, or as the case may be for the return to the applicant of all or part of any property already transferred, under that order, or, where such property has been sold, for payment to the applicant of all or part of the proceeds of sale :

Provided that before making an order under this subsection the court shall have regard to all the circumstances including, without prejudice to the generality of this proviso, the financial, and other, circumstances (in so far as made known to the court) of the person against whom the order would be made.

(3) Where an application is brought under this section in a case where the debtor's estate has been sequestrated, the

Recalling of
order for
payment of
capital sum
on divorce.
1976 c. 39.
1985 c. 37.

permanent trustee shall insert a copy of the decree of recall in the sederunt book.

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

- (a) the date of sequestration of the debtor's estate (if, in the case of a natural person, a date within his life-time) ; or
- (b) the granting by him of a trust deed which has become a protected trust deed ; or
- (c) his death where, within 12 months after his death—
 - (i) his estate has been sequestrated, or
 - (ii) a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 c. 39. 1889 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 or a warrant for summary diligence ; and
 - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.

(3) 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.

(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, 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 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 11A of the Judicial Factors (Scotland) Act 1889 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 a copy of any decree under this section affecting the sequestrated estate.

Effect of sequestration on diligence

37.—(1) The order of the court awarding sequestration shall as from the date of sequestration have the effect, in relation to diligence done (whether before or after the date of sequestration) in respect of any part of the debtor's estate, of—

- (a) a decree of adjudication of the heritable estate of the debtor for payment of his debts which has been 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) No inhibition on the estate of the debtor which takes effect within the period of 60 days before the date of sequestration shall be effectual to create a preference for the inhibitor and any relevant right of challenge shall, at the date of sequestration, vest in the permanent trustee as shall any right of the inhibitor to receive payment for the discharge of the inhibition :

Provided that this subsection shall neither entitle the trustee to receive any payment made to the inhibitor before the date of sequestration nor affect the validity of anything done before that date in consideration of such payment.

1889 c. 39.

Effect of
sequestration
on diligence.

(3) In subsection (2) above, “any relevant right of challenge” means any right to challenge a deed voluntarily granted by the debtor if it is a right which vested in the inhibitor by virtue of the inhibition.

(4) No arrestment or pouncing of the estate of the debtor (including any estate vesting in the permanent trustee under section 32(6) of this Act) executed—

(a) within the period of 60 days before the date of sequestration and whether or not subsisting at that date; or

(b) on or after the date of sequestration,

shall be effectual to create a preference for the arrester or pouncer; and the estate so arrested or pounced, or the proceeds of sale thereof, shall be handed over to the permanent trustee.

(5) An arrester or pouncer whose arrestment or pouncing is executed within the said period of 60 days shall be entitled to payment, out of the arrested or pounced estate or out of the proceeds of the sale thereof, of the expenses incurred—

(a) in obtaining the extract of the decree or other document on which the arrestment or pouncing proceeded;

(b) in executing the arrestment or pouncing; and

(c) in taking any further action in respect of the diligence.

(6) No pouncing of the ground in respect of the estate of the debtor (including any estate vesting in the permanent trustee under section 32(6) of this Act) executed within the period of 60 days before the date of sequestration or on 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.

(7) 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 11A of the Judicial Factors (Scotland) 1889 c. 39. Act 1889,

within 12 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.

(8) It shall be incompetent on or after the date of sequestration for any creditor to raise or insist in an adjudication against the estate of a debtor (including any estate vesting in the perma-

ment trustee under section 32(6) of this Act) or to be confirmed as executor-creditor on the estate.

(9) Where—

1889 c. 39.

- (a) a deceased debtor's estate is sequestrated ; or
- (b) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer his estate (in a case where the estate is absolutely insolvent),

within 12 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.

Administration of estate by permanent trustee

Taking possession of estate by permanent trustee.

38.—(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, and subject to section 40 of this Act, take possession of the debtor's whole estate so far as vesting in the permanent trustee under sections 31 and 32 of this Act and any document in the debtor's possession or control relating to his assets or his business or financial affairs ;
- (b) make up and maintain an inventory and valuation of the estate 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 a permanent trustee who is exercising, or attempting to exercise, a power conferred by subsection (2) above, the sheriff, on the application of the permanent trustee, may order that person to cease so to obstruct the permanent trustee.

(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.

39.—(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 subsection (6) below, the permanent trustee shall comply with any general or specific directions given to him, as the case may be—

Management
and
realisation of
estate.

- (a) by the creditors ;
- (b) on the application under this subsection of the commissioners, by the court ; or
- (c) if there are no commissioners, by the Accountant in Bankruptcy,

as to the exercise by him of such functions.

(2) The permanent trustee may, but if there are commissioners only with the consent of the commissioners, the creditors or the court, 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) where any right, option or other power forms part of the debtor's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

(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 if the rights of the secured creditor or creditors are preferable to those of the permanent trustee—

- (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 in the case of intimation under—

(i) sub-paragraph (i) of that paragraph, any creditor to whom intimation has been given may enforce his security ; or

(ii) sub-paragraph (ii) of that paragraph, the permanent trustee may sell that part.

(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)(a) or (c) above if the permanent trustee considers that compliance with such directions would adversely affect the sale.

(7) 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.

(8) It shall be incompetent for the permanent trustee or an associate of his or for any commissioner, to purchase any of the debtor's estate in pursuance of this section.

40.—(1) Before the permanent trustee sells or disposes of any right or interest in the debtor's family home he shall—

(a) obtain the relevant consent ; or

(b) where he is unable to do so, obtain the authority of the court in accordance with subsection (2) below.

(2) Where the permanent trustee requires to obtain the authority of the court in terms of subsection (1)(b) above, the court, after having regard to all the circumstances of the case, including—

(a) the needs and financial resources of the debtor's spouse or former spouse ;

(b) the needs and financial resources of any child of the family ;

(c) the interests of the creditors ;

(d) the length of the period during which (whether before or after the relevant date) the family home was used as a residence by any of the persons referred to in paragraph (a) or (b) above,

Power of permanent trustee in relation to the debtor's family home.

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

(3) Subsection (2) above shall apply—

(a) to an action for division and sale of the debtor's family home ; or

(b) to an action for the purpose of obtaining vacant possession of the debtor's family home,

brought by the permanent trustee as it applies to an application under subsection (1)(b) above and, for the purposes of this subsection, any reference in the said subsection (2) to that granting of the application shall be construed as a reference to the granting of decree in the action.

(4) In this section—

(a) " family home " means any property in which, at the relevant date, the debtor had (whether alone or in common with any other person) a right or interest, being property which was occupied at that date as a residence by the debtor and his spouse or by the debtor's spouse or former spouse (in any case with or without a child of the family) or by the debtor with a child of the family ;

(b) " child of the family " includes any child or grandchild of either the debtor or his spouse or former spouse, and any person who has been brought up or accepted by either the debtor or his spouse or former spouse as if he or she were a child of the debtor, spouse or former spouse whatever the age of such a child, grandchild or person may be ;

(c) " relevant consent " means in relation to the sale or disposal of any right or interest in a family home—

(i) in a case where the family home is occupied by the debtor's spouse or former spouse, the consent of the spouse, or, as the case may be, the former spouse, whether or not the family home is also occupied by the debtor ;

(ii) where sub-paragraph (i) above does not apply, in a case where the family home is occupied by the debtor with a child of the family, the consent of the debtor ; and

(d) " relevant date " means the day immediately preceding the date of sequestration.

Protection of rights of spouse against arrangements intended to defeat them.

41.—(1) If a debtor's sequestrated estate includes a matrimonial home of which the debtor, immediately before the date of issue of the act and warrant of the permanent trustee (or, if more than one such act and warrant is issued in the sequestration, of the first such issue) was an entitled spouse and the other spouse is a non-entitled spouse—

(a) the permanent trustee shall, where he—

(i) is aware that the entitled spouse is married to the non-entitled spouse ; and

(ii) knows where the non-entitled spouse is residing,

inform the non-entitled spouse, within the period of 14 days beginning with that date, of the fact that sequestration of the entitled spouse's estate has been awarded, of the right of petition which exists under section 16 of this Act and of the effect of paragraph (b) below ; and

(b) the Court of Session, on the petition under section 16 of this Act of the non-entitled spouse presented either within the period of 40 days beginning with that date or within the period of 10 weeks beginning with the date of sequestration may—

(i) under section 17 of this Act recall the sequestration ; or

(ii) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled spouse ;

if it is satisfied that the purpose of the petition for sequestration was wholly or mainly to defeat the occupancy rights of the non-entitled spouse.

(2) In subsection (1) above—

“entitled spouse” and “non-entitled spouse” have the same meanings as in section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 ;

“matrimonial home” has the meaning assigned by section 22 of that Act as amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ; and

“occupancy rights” has the meaning assigned by section 1(4) of the said Act of 1981.

1981 c. 59.

1985 c. 73.

Contractual powers of permanent trustee.

42.—(1) Subject to subsections (2) and (3) below, 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 enter into any contract where he considers that this would be beneficial for the administration of the debtor's estate.

43.—(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. Money received by permanent trustee.

(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.

Examination of debtor

44.—(1) The permanent trustee may request—

(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 debtor's spouse 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, if he considers it necessary, the permanent trustee may apply to the sheriff for an order to be made under subsection (2) below.

(2) Subject to section 46(2) of this Act, on application to him under subsection (1) above the sheriff may make an order requiring the debtor or 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 order) and at a time specified in the order.

(3) A person who fails without reasonable excuse to comply with an order made under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

Private
examination.

(4) Where the debtor is an entity whose estate may be sequestrated by virtue of section 6(1) of this Act, the references in this section and in sections 45 to 47 of this Act to the debtor shall be construed, unless the context otherwise requires, as references to a person representing the entity.

Public
examination.

45.—(1) Not less than 8 weeks before the end of the first accounting period, 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 value of the creditors, shall,

apply to the sheriff for an order for the public examination before the sheriff of the debtor or of a relevant person relating to the debtor's assets, his dealings with them or his conduct in relation to his business or financial affairs :

Provided that, on cause shown, such application may be made by the permanent trustee at any time.

(2) Subject to section 46(2) of this Act, the sheriff, on an application under subsection (1) above, shall make an order requiring the debtor or relevant person 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 order) and at a time specified in the order.

(3) On the sheriff making an order 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—

(i) to every creditor known to the permanent trustee ; and

(ii) where the order is in respect of a relevant person, to the debtor, and

inform the creditor and, where applicable, the debtor that he may participate in the examination.

(4) A person who fails without reasonable excuse to comply with an order made under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

46.—(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 :

Provided that a warrant under paragraph (a) above shall not be granted nor a request under paragraph (b) above made unless the court is satisfied that it is necessary to do so to secure the attendance of the debtor or relevant person at the examination.

(2) If the debtor or a relevant person is for any good reason prevented from attending for examination, the sheriff may, without prejudice to subsection (3) below, grant a commission to take his examination (the commissioner being in this section and section 47 below referred to as an "examining commissioner").

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

(4) The sheriff or the examining commissioner may order the debtor or a relevant person 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.

47.—(1) The examination, whether before the sheriff or an examining commissioner, shall be taken on oath. Conduct of examination.

(2) At the examination—

- (a) the permanent trustee or a solicitor or counsel acting on his behalf 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) a person subject to examination shall not be required to disclose any information which he has received from a person who is not called for examination if the information is confidential between them.

1907 c. 51.

(4) 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 examining commissioner.

(5) The debtor's deposition at the examination shall be subscribed by himself and by the sheriff (or, as the case may be, the examining commissioner) and shall be inserted in the sederunt book.

(6) 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.

(7) 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 disallow or restrict the entitlement to such fees or allowances.

Submission and adjudication of claims

Submission of claims to permanent trustee.

48.—(1) Subject to subsection (2) below and subsections (8) and (9) of section 52 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 who has submitted a claim under this section (or under section 22 of this Act, a statement of claim which has been deemed re-submitted as mentioned in subsection (2) above) may at any time submit a further claim under this section specifying a different amount for his claim :

Provided that a secured creditor shall not be entitled to produce a further 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.

(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 an order requiring the creditor or other person to attend for his private examination before the sheriff.

(6) Sections 44(2) and (3) and 47(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 (10) 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 ”.

(8) At any private examination under subsection (5) above, a solicitor or counsel may act on behalf of the permanent trustee or he may appear himself.

Adjudication
of claims.

49.—(1) At the commencement of every meeting of creditors (other than the statutory meeting), the permanent trustee shall, for the purposes of section 50 of this Act so far as it relates to voting at that meeting, 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 such a dividend shall, not later than 4 weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted to him under this Act ; and shall at the same time make a decision on any matter requiring to be specified under paragraph (a) or (b) of subsection (5) below.

(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, in such manner as may be prescribed, at the rate of exchange prevailing at the close 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 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 may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection, with a decision in respect of any matter requiring to be specified under subsection (5)(a) or (b) above), 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.

Entitlement to vote and draw dividend

50. A creditor who has had his claim accepted in whole or in part by the permanent trustee or on appeal under subsection (6) of section 49 of this Act shall be entitled— Entitlement to vote and draw dividend.

- (a) subject to sections 29(1)(a) and 30(1) and (4)(b) of this Act, in a case where the acceptance is under (or on appeal arising from) subsection (1) of the said section 49, to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted ; and
- (b) in a case where the acceptance is under (or on appeal arising from) subsection (2) of the said section 49, to payment out of the debtor's estate of a dividend in respect of the accounting period for the purposes of which the claim is accepted ; but such entitlement to payment shall arise only in so far as that estate has funds available to make that payment, having regard to section 51 of this Act.

Distribution of debtor's estate

51.—(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— Order of priority in distribution.

- (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 specified in subsection (7) below on—
 - (i) the preferred debts ;
 - (ii) the ordinary debts,
 between the date of sequestration and the date of payment of the debt ;
- (h) any postponed debt.

(2) In this Act “ preferred debt ” means a debt listed in Part I of Schedule 3 to this Act ; and Part II of that Schedule shall have effect for the interpretation of the said Part I.

(3) In this Act “ postponed debt ” means—

- (a) a loan made to the debtor, in consideration of a share of the profits in his business, which is postponed under section 3 of the Partnership Act 1890 to the claims of other creditors ;
- (b) a loan made to the debtor by the debtor's spouse ;
- (c) a creditor's right to anything vesting in the permanent trustee by virtue of a successful challenge under section 34 of this Act or to 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 to 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.

(6) Nothing in this section shall affect—

- (a) the right of a secured creditor which is preferable to the rights of the permanent trustee ; or

(b) any preference of the holder of a lien over a title deed or other document which has been delivered to the permanent trustee in accordance with a requirement under section 38(4) of this Act.

(7) The rate of interest referred to in paragraph (g) of subsection (1) above shall be whichever is the greater of—

- (a) the prescribed rate at the date of sequestration ; and
- (b) the rate applicable to that debt apart from the sequestration.

52.—(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. Estate to be distributed in respect of accounting periods.

(2) In this Act "accounting period" shall be construed in accordance with subsections (1) above and (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 under section 53(7) of this Act 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 51 of this Act, other than his own remuneration, at any time ;
- (b) the preferred debts at any time but only with the consent of the commissioners or, if there are no commissioners, of the Accountant in Bankruptcy.

(5) If the permanent trustee—

- (a) is not ready to pay a dividend in respect of an accounting period ; or
- (b) considers it would be inappropriate to pay such a dividend because the expense of doing so would be disproportionate to the amount of the dividend,

he may, with the consent of the commissioners, or if there are no commissioners of the Accountant in Bankruptcy, 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 considers that it would be expedient to accelerate payment of a dividend other than a dividend in respect of the first accounting period, the accounting period shall be shortened so as to end on such date as the

permanent trustee, with the consent of the commissioners (if any), may specify and the next accounting period shall run from the end of that shortened period; and the permanent trustee shall record in the sederunt book the date so specified.

(7) Where an appeal is taken under section 49(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 and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(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 48(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, for such time as is reasonable to enable him to produce that evidence or any other evidence that will enable the permanent trustee to be satisfied under the said section 48(5), an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(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.

53.—(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, 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 in respect of legal services incurred by the permanent trustee shall, before payment thereof by him, be submitted for taxation to the auditor of the court before which 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

- (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.

(4) The basis for fixing the amount of the remuneration payable to the permanent trustee may be a commission calculated by reference to the value of the debtor's estate which has been realised by the permanent trustee, but there shall in any event be taken into account—

- (a) the work which, having regard to that value, was reasonably undertaken by him ; and

- (b) 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, if an appeal is so taken, on the final determination of the last such 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 in respect of which an amount has been set aside under subsection (7) or (8) of section 52 of this Act,

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.

Discharge of debtor

Automatic discharge after 3 years.

54.—(1) Subject to the following provisions of this section, the debtor shall be discharged on the expiry of 3 years from the date of sequestration.

(2) Every debtor who has been discharged under or by virtue of this section or section 75(4) of this Act 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, shall grant a certificate of discharge in the prescribed form.

(3) The permanent trustee or any creditor may, not later than 2 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—

(i) 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

(ii) 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 ;

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 the permanent trustee or (if he has been discharged) the Accountant in Bankruptcy shall, not later than 7 days before the date fixed under paragraph (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.

(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 it is made.

(7) Where the discharge is deferred under subsection (4) or (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) A debtor whose discharge has been deferred under subsection (4) or (6) above may, at any time thereafter and provided that he lodges in court a declaration as to the matters mentioned in sub-paragraphs (i) and (ii) of paragraph (b) of the said subsection (4), petition the sheriff for his discharge; and subsections (5) to (7) above shall, with any necessary modifications, apply in relation to the proceedings which shall follow the lodging of a declaration under this subsection as they apply in relation to the proceedings which follow the timeous lodging of a declaration under the said paragraph (b).

(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 and this subsection shall apply in relation to that further deferment.

Effect of discharge under section 54.

55.—(1) Subject to subsection (2) below, on the debtor's discharge under section 54 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 64 of this Act.

1980 c. 4.

Discharge on composition.

56. Schedule 4 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.

Discharge of permanent trustee

57.—(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—

Discharge of permanent trustee.

- (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 to all the creditors known to the permanent trustee and shall inform the debtor and such 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 ;
- (b) that the sederunt book is available for inspection at the office of the Accountant in Bankruptcy and contains the audited accounts of, and scheme of division in, the sequestration ; and
- (c) of the effect mentioned in subsection (5) below.

(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 considering any representations duly made to him, shall—

- (a) grant or refuse to grant the certificate of discharge ; and
- (b) notify (in addition to the permanent trustee) the debtor and all creditors who have made such representations accordingly.

(4) The permanent trustee, the debtor or any creditor who has made representations under subsection (2)(a) above, may within 14 days after the issuing of the determination under subsection (3) above, appeal therefrom to the sheriff and if the sheriff determines that a certificate of discharge which has been refused should be granted he shall order the Accountant in Bankruptcy to grant it ; 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 under this section by the Accountant in Bankruptcy 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 including, where he was also the interim trustee, the functions conferred on him as interim trustee.

(6) Where a certificate of discharge is granted under this section, the Accountant in Bankruptcy shall make an appropriate entry in the register of insolvencies and in the sederunt book.

(7) Where 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.

**Unclaimed
dividends.**

58.—(1) Any person, producing evidence of his right, may apply to the Accountant in Bankruptcy to receive a dividend deposited under section 57(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 amount of that dividend and of 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 57(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 be entitled to payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.

Voluntary trust deeds for creditors

**Voluntary
trust deeds for
creditors.**

59. Schedule 5 to this Act shall have effect in relation to trust deeds executed after the commencement of this section.

Miscellaneous and supplementary

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

60.—(1) Where a creditor has an obligant (in this section referred to as the "co-obligant") bound to him along with the debtor for the whole or part of the debt, the co-obligant shall not be freed or discharged from his liability for the debt by reason of the discharge of the debtor or by virtue of the creditor's voting or drawing a dividend or assenting to, or not opposing—

- (a) the discharge of the debtor ; or
- (b) any composition.

(2) Where—

- (a) 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.

61.—(1) This section applies where the debtor is or has been a party to a transaction for, or involving, the provision to him of credit and his estate is sequestrated. Extortionate
credit
transactions.

(2) The court may, on the application of the permanent trustee, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than three years before the date of sequestration.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit ; or
- (b) it otherwise grossly contravened ordinary principles of fair dealing ; and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is, or as the case may be was, extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit—

- (a) provision setting aside the whole or part of any obligation created by the transaction ;

- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
- (c) provision requiring any person who is a party to the transaction to pay to the permanent trustee any sums paid to that person, by virtue of the transaction, by the debtor ;
- (d) provision requiring any person to surrender to the permanent trustee any property held by him as security for the purposes of the transaction ;
- (e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the permanent trustee in accordance with an order under this section shall vest in the permanent trustee.

(6) Neither—

(a) the permanent trustee ; nor

(b) a debtor who has not been discharged,

shall be entitled to make an application under section 139(1)(a) of the Consumer Credit Act 1974 (re-opening of extortionate credit agreements) for any agreement by which credit is or has been provided to the debtor to be re-opened ; but the powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a gratuitous alienation or unfair preference.

1974 c. 39.

(7) In this section “ credit ” has the same meaning as in the said Act of 1974.

Sederunt book
and other
documents

62.—(1) Subject to subsection (2) below, whoever by virtue of this Act for the time being holds the sederunt book shall make it available for inspection at all reasonable hours by any interested person.

(2) As regards any case in which the person on whom a duty is imposed by subsection (1) above is the Accountant in Bankruptcy, the Court of Session may by act of sederunt—

- (a) limit the period for which the duty is so imposed ; and
- (b) prescribe conditions in accordance with which the duty shall be carried out.

(3) 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.

(4) 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.

(5) 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.

(6) An extract from the register of insolvencies bearing to be signed by the Accountant in Bankruptcy shall be sufficient evidence of the facts stated therein.

63.—(1) The sheriff may, on the application of any person having an interest—

Power to cure defects in procedure.

(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 anything required or authorised to be done in, or in connection with, the sequestration process cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The sheriff, in an order under 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 the Court of Session so directs 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 record in the sederunt book the decision of the sheriff or the Court of Session under this section.

Debtor to co-operate with permanent trustee.

64.—(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.

(5) A person convicted of an offence under subsection (3) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or—

(i) to imprisonment for a term not exceeding 3 months ; or

(ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding 6 months,

or (in the case of either sub-paragraph) to both such fine and such imprisonment ; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years or to both.

Arbitration and compromise.

65.—(1) The permanent trustee may (but if there are commissioners only with the consent of the commissioners, the creditors or the court)—

(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 copy of the decree arbitral, or record the compromise, in the sederunt book.

66. Part I of Schedule 6 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. Meetings of creditors and commissioners.

67.—(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. General offences by debtor etc.

(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 shall be guilty of an offence, unless the transferor or grantor shows that he did not do so with intent to prejudice the creditors.

(7) A debtor who is engaged in trade or business shall be guilty of an offence if at any time in the period of one year ending with 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.

(8) A debtor who is engaged in trade or business shall be guilty of an offence if at any time in the period of 2 years ending with 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:

Provided that a debtor shall not be guilty of an offence under this subsection if, at the date of sequestration, his unsecured liabilities did not exceed the prescribed amount; but, for the purposes of this proviso, if at any time the amount of a debt (or part of a debt) over which a security is held exceeds the value of the security, that debt (or part) shall be deemed at that time to be unsecured to the extent of the excess.

(9) If a debtor, either alone or jointly with another person, obtains credit to the extent of £100 (or such other sum as may be prescribed) or more without giving the person from whom he obtained it the relevant information about his status he shall be guilty of an offence.

(10) For the purposes of subsection (9) above—

(a) "debtor" means—

(i) a debtor whose estate has been sequestrated, or

(ii) a person who has been adjudged bankrupt in England and Wales or Northern Ireland,

and who, in either case, has not been discharged;

(b) the reference to the debtor obtaining credit includes a reference to a case where goods are hired to him

under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement ; and

- (c) the relevant information about the status of the debtor is the information that his estate has been sequestrated and that he has not received his discharge or, as the case may be, that he is an undischarged bankrupt in England and Wales or Northern Ireland.

(11) In this section—

- (a) “ 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 ;
- (b) references to intent to prejudice creditors shall include references to intent to prejudice an individual creditor.

(12) A person convicted of any offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or—
 - (i) to imprisonment for a term not exceeding 3 months ; or
 - (ii) if he has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding 6 months,or (in the case of either sub-paragraph) to both such fine and such imprisonment ; or
- (b) on conviction on indictment to a fine or—
 - (i) in the case of an offence under subsection (1), (2), (4) or (7) above to imprisonment for a term not exceeding 2 years,
 - (ii) in any other case to imprisonment for a term not exceeding 2 years.or (in the case of either sub-paragraph) to both such fine and such imprisonment.

68.—(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. Summary proceedings.

(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.

Outlays of interim and permanent trustee.

69. The Secretary of State may, by regulations, provide for the premium (or a proportionate part thereof) of any bond of caution or other security required, for the time being, to be given by an insolvency practitioner to be taken into account as part of the outlays of the insolvency practitioner in his acting as an interim trustee or permanent trustee.

Supplies by utilities.

70.—(1) This section applies where on any day (“the relevant day”)—

(a) sequestration is awarded in a case where the petition was presented by the debtor,

(b) a warrant is granted under section 12(2) of this Act in a case where the petition was presented by a creditor or a trustee acting under a trust deed ; or

(c) the debtor grants a trust deed,
and in this section “the office holder” means the interim trustee, the permanent trustee or the trustee acting under a trust deed, as the case may be.

(2) If a request falling within subsection (3) below is made for the giving after the relevant day of any of the supplies mentioned in subsection (4) below, the supplier—

(a) may make it a condition of the giving of the supply that the office holder personally guarantees the payment of any charges in respect of the supply ; and

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the debtor before the relevant day are paid.

(3) A request falls within this subsection if it is made—

(a) by or with the concurrence of the office holder ; and

(b) for the purposes of any business which is or has been carried on by or on behalf of the debtor.

(4) The supplies referred to in subsection (2) above are—

(a) a supply of gas by the British Gas Corporation ;

(b) a supply of electricity by an Electricity Board (within the meaning of the Energy Act 1983) ;

- (c) a supply of water by a water authority (within the meaning of the Water (Scotland) Act 1980); 1980 c. 45.
- (d) a supply of telecommunication services (within the meaning of the Telecommunications Act 1984) by a public telecommunications operator (within the meaning of that Act). 1984 c. 12.

(5) In subsection (4) above the reference to telecommunication services does not include a reference to services consisting in the conveyance of cable programmes, that is to say programmes included in cable programme services (within the meaning of the Cable and Broadcasting Act 1984). 1984 c. 46.

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

- (a) the Accountant in Bankruptcy; and
- (b) the petition department of the Court of Session.

72. Any power to make regulations under this Act shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and the regulations may make different provision for different cases or classes of case. Regulations.

73.—(1) In this Act, unless the context otherwise requires— Interpretation.

- “ Accountant in Bankruptcy ” shall be construed in accordance with section 1 of this Act ;
- “ accounting period ” shall be construed in accordance with section 52(1) and (6) of this Act ;
- “ apparent insolvency ” and “ apparently insolvent ” shall be construed in accordance with section 7 of this Act ;
- “ appropriate bank or institution ” means a bank or institution mentioned in section 2(1) of the Banking Act 1979 c. 37. 1979 or for the time being specified in Schedule 1 to that Act ;
- “ act and warrant ” means an act and warrant issued under section 25(2) of, or paragraph 2(2) of Schedule 2 to, this Act ;
- “ associate ” shall be construed in accordance with section 74 of this Act ;
- “ business ” means the carrying on of any activity, whether for profit or not ;

- “commissioner”, except in the expression “examining commissioner”, shall be construed in accordance with section 30(1) of this Act;
- “court” means Court of Session or sheriff;
- “date of sequestration” has the meaning assigned by section 12(4) of this Act;
- “debtor” includes, without prejudice to the expression’s generality, an entity whose estate may be sequestrated by virtue of section 6 of this Act, a deceased debtor or his executor or a person entitled to be appointed as executor to a deceased debtor;
- “examination” means a public examination under section 45 of this Act or a private examination under section 44 of this Act;
- “examining commissioner” shall be construed in accordance with section 46(2) of this Act;
- “interim trustee” shall be construed in accordance with section 2 of this Act;
- “list of interim trustees” has the meaning assigned by section 1(1)(b) of this Act;
- “ordinary debt” shall be construed in accordance with section 51(1)(f) of this Act;
- “permanent trustee” shall be construed in accordance with section 3 of this Act;
- “postponed debt” has the meaning assigned by section 51(3) of this Act;
- “preferred debt” has the meaning assigned by section 51(2) of this Act;
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “protected trust deed” shall be construed in accordance with paragraph 8 of Schedule 5 to this Act;
- “qualified creditor” and “qualified creditors” shall be construed in accordance with section 5(4) of this Act;
- “qualified to act as an insolvency practitioner” means being, in accordance with section 2 of the Insolvency Act 1985 (qualifications of insolvency practitioners), so qualified:
- Provided that, until the coming into force of that section the expression shall instead mean satisfying such requirements (which, without prejudice to the generality of this definition, may include requirements as to the finding of caution) as may be prescribed for the purposes of this Act;
- “register of insolvencies” has the meaning assigned by section 1(1)(c) of this Act;

“relevant person” has the meaning assigned by section 44(1)(b) 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 ;

“sederunt book” means the sederunt book maintained under section 3(1)(e) of this Act ;

“standard scale” means the standard scale as defined in section 75(b) of the Criminal Justice Act 1982 ;

1982 c. 48.

“statutory meeting” has the meaning assigned by section 21(1) of this Act ;

“statutory maximum” has the meaning assigned by section 74(2) of the Criminal Justice Act 1982 ;

“trust deed” has the meaning assigned by section 5(2)(c) of this Act ; and

“unfair preference” means a preference created as is mentioned in subsection (1) of section 36 of this Act by a transaction to which subsection (4) of that section applies.

(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.

(3) Any reference in this Act to value of the creditors is, in relation to any matter, a reference to the value of their claims as accepted for the purposes of that matter.

(4) Any reference in this Act to “the creditors” in the context of their giving consent or doing any other thing shall, unless the context otherwise requires, be construed as a reference to the majority in value of such creditors as vote in that context at a meeting of creditors.

(5) Any reference in this Act to any of the following acts by a creditor barring the effect of any enactment or rule of law relating to the limitation of actions in any part of the United Kingdom, namely—

(a) the presentation of a petition for sequestration ;

(b) the concurrence in such a petition ; and

(c) the submission of a claim,

shall be construed as a reference to that act having the same effect, for the purposes of any such enactment or rule of law, as an effective acknowledgement of the creditor’s claim ; and any reference in this Act to any such enactment shall not include a reference to an enactment which implements or gives effect to any international agreement or obligation.

Meaning of
"associate".

74.—(1) Subject to subsection (7) below, for the purposes of this Act any question whether a person is an associate of another person shall be determined in accordance with the following provisions of this section (any reference, whether in those provisions or in regulations under the said subsection (7), to a person being an associate of another person being taken to be a reference to their being associates of each other).

(2) A person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership; and a firm is an associate of any person who is a member of the firm.

(4) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant treating—

(a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child; and

(b) an illegitimate child as the legitimate child of his mother and reputed father,

and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife.

(5) A person is an associate of any person whom he employs or by whom he is employed; and for the purposes of this subsection any director or other officer of a company shall be treated as employed by that company.

(6) In subsection (5) above, "company" includes any body corporate (whether incorporated in Great Britain or elsewhere).

(7) The Secretary of State may by regulations—

(a) amend the foregoing provisions of this section so as to provide further categories of persons who, for the purposes of this Act, are to be associates of other persons; and

(b) provide that any or all of subsections (2) to (6) above (or any subsection added by virtue of paragraph (a) above) shall cease to apply, whether in whole or in part, or shall apply subject to such modifications as he may specify in the regulations;

and he may in the regulations make such incidental or transitional provision as he considers appropriate.

75.—(1) Subject to subsection (3) below—

Amendments,
repeals and
transitional
provisions.

(a) the enactments mentioned in Part I of Schedule 7 to this Act shall have effect subject to the amendments respectively specified in that Schedule, being amendments consequential on the provisions of this Act ;

(b) Part II of that Schedule, which re-enacts certain provisions of the Bankruptcy (Scotland) Act 1913 repealed by this Act, shall have effect. 1913 c. 20.

(2) The enactments set out in columns 1 and 2 of Schedule 8 to this Act are, subject to subsection (3) below, hereby repealed to the extent specified in the third column of that Schedule.

(3) Subject to subsections (4) and (5) below, nothing in this Act shall affect any of the enactments repealed or amended by this Act in their operation in relation to a sequestration as regards which the award was made before the coming into force of this section.

(4) Where a debtor's estate has been sequestrated before the coming into force of this section but he has not been discharged, the debtor shall be discharged on the expiry of—

(a) 2 years after such coming into force ; or

(b) 3 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 trustee in the sequestration or any creditor may apply to the sheriff for a deferment of that discharge ; and subsections (4) to (8) of section 54 of this Act shall apply in relation to that application by the trustee as they apply in relation to an application under subsection (3) of that section by the permanent trustee.

(5) Section 63 of this Act shall apply in a case where before the coming into force of this section 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 ; and

(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 " .

(6) The apparent insolvency of a debtor may be constituted for the purposes of this Act notwithstanding that the circumstance founded upon to constitute the apparent insolvency occurred on a date before the coming into force of section 7 of this Act; and, for those purposes, the apparent insolvency shall be deemed to have been constituted on that date:

Provided that apparent insolvency shall be constituted by virtue of this subsection only on grounds which would have constituted notour bankruptcy under the Bankruptcy (Scotland) Act 1913.

1913 c. 20.

(7) Where a debtor whose estate is sequestrated after the commencement of this subsection is liable, by virtue of a transaction entered into before that date, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the sequestrated estate, section 102 of the Bankruptcy (Scotland) Act 1913 (trustee's powers in relation to copyright) shall apply in relation to the permanent trustee as it applied before its repeal in relation to a trustee in bankruptcy under the said Act of 1913.

(8) Where sequestration of a debtor's estate is awarded under this Act a person shall not be guilty of an offence under any provision of this Act in respect of anything done before the date of commencement of that provision but, notwithstanding the repeal by this Act of the Bankruptcy (Scotland) Act 1913, he shall be guilty of an offence under that Act in respect of anything done before that date which would have been an offence under that Act if the award of sequestration had been made under that Act.

(9) Unless the context otherwise requires, 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.

(10) Unless the context otherwise requires, any reference in any enactment or document to a person's estate being sequestrated under the Bankruptcy (Scotland) Act 1913 shall be construed as, or as including, a reference to its being sequestrated under this Act; and analogous references shall be construed accordingly.

(11) Unless the context otherwise requires, any reference in any enactment or document to a trustee in sequestration or to a trustee in bankruptcy shall be construed as a reference to a permanent trustee, or in a case where no permanent trustee has been elected or appointed an interim trustee, within the meaning of this Act; and analogous expressions shall be construed accordingly.

(12) Unless the context otherwise requires, any reference in any enactment or document—

- (a) to a “gratuitous alienation” shall be construed as including a reference to an alienation challengeable under section 34(1) of this Act or under section 615A(1) of the Companies Act 1985 ; 1985 c. 6.
- (b) to a “fraudulent preference” or to an “unfair preference” shall be construed as including a reference to—
 - (i) an unfair preference within the meaning of this Act ;
 - (ii) a preference created as is mentioned in subsection (1) of section 36 of this Act (as applied by section 615B of the said Act of 1985), by a transaction to which subsection (4) of the said section 36 (as so applied) applies.

76.—(1) Any—

- (a) payments received by the Secretary of State under section 58(3) of this Act ; or Receipts and expenses.
- (b) amounts handed over to him in accordance with section 53 of this Act by virtue of the insertion provided for in paragraph 9 of Schedule 2 to this Act,

shall be paid by him into the Consolidated Fund.

(2) There shall be paid out of moneys provided by Parliament—

- (a) any amount of outlays and remuneration payable in accordance with section 53 of this Act by virtue of the insertion mentioned in subsection (1)(b) above ;
- (b) any administrative expenses incurred by the Secretary of State under this Act ; and
- (c) any increase attributable to this Act in the sums so payable under any other Act.

77. The application of this Act to the Crown is to the Crown as creditor only. Crown application.

78.—(1) This Act may be cited as the Bankruptcy (Scotland) Act 1985. Short title, commencement and extent.

(2) This Act, except this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint ; and different days may be so appointed for different purposes and for different provisions.

(3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force (whether wholly or partly) by the order.

(4) Without prejudice to section 75(3) to (5) of this Act, this Act applies to sequestrations as regards which the petition—

(a) is presented on or after the date of coming into force of section 5 of this Act ; or

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

(5) This Act, except the provisions mentioned in subsection (6) below, extends to Scotland only.

(6) The provisions referred to in subsection (5) above are sections 8(5), 22(8) (including that subsection as applied by section 48(7)), 46, 55 and 73(5), paragraph 16(b) of Schedule 4 and paragraph 3 of Schedule 5.

SCHEDULES

SCHEDULE 1

Sections 5(5)
and 22(9).

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 which is due on the debt as at the date of sequestration.

(2) If a debt does not depend on a contingency but would not be payable but for the sequestration until after the date of sequestration, the amount of the claim shall be calculated as if the debt were payable on the date of sequestration but subject to the deduction of interest at the rate specified in section 51(7) of this Act from the said date until the date for payment of the debt.

(3) In calculating the amount of his claim, a creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the debtor or by the usage of trade.

Claims for aliment and periodical allowance on divorce

2.—(1) A person entitled to aliment, however arising, from a living debtor as at the date of sequestration, or from a deceased debtor immediately before his death, shall not be entitled to include in the amount of his claim—

(a) any unpaid aliment for any period before the date of sequestration unless the amount of the aliment has been quantified by court decree or by any legally binding obligation which is supported by evidence in writing, and, in the case of spouses (or, where the aliment is payable to a divorced person in respect of a child, former spouses) they were living apart during that period ;

(b) any aliment for any period after the date of sequestration.

(2) Sub-paragraph (1) above shall apply to a periodical allowance payable on divorce—

(a) by virtue of a court order ; or

(b) under any legally binding obligation which is supported by evidence in writing,

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

Debts depending on contingency

3.—(1) Subject to sub-paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.

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(2) On an application by the creditor—

(a) to the permanent trustee ; or

(b) if there is no permanent trustee, to the sheriff,

the permanent trustee or sheriff shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more ; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(3) Any interested person may appeal to the sheriff against a valuation under sub-paragraph (2) above by the permanent trustee, and the sheriff may affirm or vary that valuation.

Debts due under composition contracts

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

Secured debts

5.—(1) In calculating the amount of his claim, a secured creditor shall deduct the value of any security as estimated by him :

Provided that if he surrenders, or undertakes in writing to surrender, a security for the benefit of the debtor's estate, he shall not be required to make a deduction of the value of that security.

(2) The permanent trustee may, at any time after the expiry of 12 weeks from the date of sequestration, require a secured creditor at the expense of the debtor's estate to discharge the security or convey or assign it to the permanent trustee on payment to the creditor of the value specified by the creditor ; and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of his debt remaining after receipt of such payment.

(3) In calculating the amount of his claim, a creditor whose security has been realised shall deduct the amount (less the expenses of realisation) which he has received, or is entitled to receive, from the realisation.

Valuation of claims against partners for debts of the partnership

6. Where a creditor claims in respect of a debt of a partnership, against the estate of one of its partners, the creditor shall estimate the value of—

(a) the debt to the creditor from the firm's estate where that estate has not been sequestrated ; or

(b) the creditor's 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.

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SCHEDULE 2

Sections 23(4),
24(5) and
28(5).

ADAPTATION OF PROCEDURE ETC. UNDER THIS ACT WHERE PERMANENT TRUSTEE NOT ELECTED

1. Section 24(2) shall, in so far as it relates to qualifications for continuing to act as permanent trustee, apply to a permanent trustee appointed, as it applies to one elected, under this Act.

2.—(1) In place of sections 25 and 26, sub-paragraphs (2) and (3) below shall have effect.

(2) The sheriff clerk shall issue to the permanent trustee an act and warrant in such form as shall be prescribed by the Court of Session by act of sederunt.

(3) The permanent trustee, on appointment, shall make such insertions in the sederunt book as are appropriate to provide a record of the sequestration process before his appointment, but he shall make no insertion therein relating to the written comments made by the interim trustee under section 20(2)(c) of this Act.

3.—(1) In place of subsections (1) to (5) of section 28 sub-paragraphs (2) and (3) below shall have effect.

(2) The permanent trustee may resign office with the consent of the Accountant in Bankruptcy or the sheriff.

(3) Where the permanent trustee resigns under sub-paragraph (2) above, or dies, a person nominated by the Accountant in Bankruptcy from the list of interim trustees, not being a person ineligible for election as permanent trustee under section 24(2) of this Act, shall forthwith apply to the sheriff for appointment as permanent trustee, and the sheriff shall thereupon so appoint him.

4. In section 29—

(a) subsection (5) shall not have effect but sub-paragraph (3) of paragraph 3 above shall apply where the permanent trustee has been removed from office under subsection (1)(b) of section 29 of this Act or following an appeal under subsection (4) of that section as that sub-paragraph applies where he resigns or dies ;

(b) subsection (6) shall have effect as if for the words from “(b)” to the end there were substituted the words—

“(b) appoint as permanent trustee a person nominated by the Accountant in Bankruptcy from the list of interim trustees, not being a person ineligible for election as permanent trustee under section 24(2) of this Act.” ;

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- (c) subsection (7) shall not have effect ; and
- (d) subsection (8) shall have effect as if for the word “ (4) ” there were substituted the word “ (5) ”.

5. Where an appointment is made under paragraph 3(3), or by virtue of paragraph 4(a) or (b), above the provisions of this Act shall continue to have effect as regards the sequestration subject to such modifications and with such further provisions as are set out in this Schedule.

6. Section 30 shall not have effect, and, in any sequestration to which this Schedule applies by virtue of section 28(5) of this Act, any commissioners already holding office shall cease to do so.

7. In section 39—

- (a) in subsection (1), the reference to the permanent trustee's confirmation in office shall be construed as a reference to his receiving the act and warrant issued under paragraph 2(2) of this Schedule ;
- (b) subsection (2) shall have effect as if for the words “ if there are commissioners only with the consent of the commissioners, the creditors or the court ” there were substituted the words “ only with the consent of the Accountant in Bankruptcy ”.

8. Any power under section 44 or 45 to apply to the sheriff for an order requiring attendance shall be exercisable only with the consent of the Accountant in Bankruptcy (unless, in the case of section 45(1), the Accountant in Bankruptcy has requested the application).

9. In subsection (1) of section 53 the reference to the period in respect of which submission is to be made by the permanent trustee shall, where that period is the first accounting period, be construed as including a reference to any period during which he has acted as interim trustee in the sequestration ; and that section shall have effect as if after that subsection there were inserted the following subsection—

“(1A) Where the funds of the debtor's estate are insufficient to meet the amount of the outlays and remuneration of both the interim trustee and the permanent trustee—

- (a) that amount to the extent of the insufficiency shall be met by the Accountant in Bankruptcy out of money provided under section 76(2)(a) of this Act ; and
- (b) the Accountant in Bankruptcy in his determination under subsection (3)(a)(ii) below shall specify the respective sums to be met out of the debtor's estate and out of money so provided :

Provided that—

- (i) no amount shall be payable by virtue of paragraph (a) above if any dividend has been paid to creditors in the sequestration ; and

- (ii) if any amount is paid by virtue of that paragraph and a subsequent distribution of the estate is proposed, that amount shall be handed over to the Secretary of State before such distribution is made.” SCH. 2

SCHEDULE 3

Section 51.

PREFERRED DEBTS

PART I

LIST OF PREFERRED DEBTS

Debts to Inland Revenue

1.—(1) Sums due at the relevant date from the debtor on account of deductions of income tax from emoluments paid during the period of twelve months next before that date, being deductions which the debtor was liable to make under section 204 of the Income and Corporation Taxes Act 1970 (pay as you earn), less the amount of the repayments of income tax which the debtor was liable to make during that period. 1970 c. 10.

(2) Sums due at the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section 69 of the Finance (No. 2) Act 1975 (sub-contractors in the construction industry). 1975 c. 45.

Debts due to Customs and Excise

2.—(1) Any value added tax which is referable to the period of six months next before the relevant date.

(2) The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of twelve months next before that date.

(3) Any amount which is due—

(a) by way of general betting duty or bingo duty, or

(b) under section 12(1) of the Betting and Gaming Duties Act 1981 (general betting duty and pool betting duty recoverable from agent collecting stakes), or

(c) under section 14 of, or Schedule 2 to, that Act (gaming licence duty),

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

Social Security contributions

3.—(1) All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the twelve months next before the relevant date. 1975 c. 14. 1975 c. 15.

(2) All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of the said Acts of 1975, being sums which—

(a) are due to the Commissioners of Inland Revenue (rather

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than to the Secretary of State or a Northern Ireland department); and

- (b) are assessed on the debtor up to 5th April next before the relevant date,

but not exceeding, in the whole, any one year's assessment.

Contributions to occupational pension schemes, etc.

1975 c. 60.

4. Any sum which is owed by the debtor and is a sum to which Schedule 3 to the Social Security Pensions Act 1975 (contributions to occupational pension scheme and state scheme premiums) applies.

Remuneration of employees, etc.

5.—(1) So much of any amount which—

- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and

- (b) is payable by way of remuneration in respect of the whole or any part of the period of four months next before the relevant date,

as does not exceed the prescribed amount.

(2) An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

(3) So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within sub-paragraph (1) or (2) above.

6. So much of any amount which—

- (a) is ordered, whether before or after the relevant date, to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985; and

- (b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,

as does not exceed such amount as may be prescribed.

1985 c. 17.

PART II

INTERPRETATION OF PART I

Meaning of "the relevant date"

7. In Part I of this Schedule "the relevant date" means—

- (a) in relation to a debtor (other than a deceased debtor), the date of sequestration; and

- (b) in relation to a deceased debtor, the date of his death.

Periods to which value added tax referable

8.—(1) For the purpose of paragraph 2(1) of Part I of this Schedule—

- (a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the period of

six months next before the relevant date ("the relevant period"), the whole amount of that tax shall be referable to the relevant period; and

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

(2) In sub-paragraph (1) above "prescribed accounting period" has the same meaning as in the Value Added Tax Act 1983.

1983 c. 55.

Amounts payable by way of remuneration

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

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

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

- (a) a guarantee payment under section 12(1) of the Employment Protection (Consolidation) Act 1978 (employee without work to do for a day or part of a day), 1978 c. 44.
- (b) remuneration on suspension on medical grounds under section 19 of that Act,
- (c) any payment for the time off under section 27(3) (trade-union duties), 31(3) (looking for work, etc.) or 31A(4) (ante-natal care) of that Act,
- (d) statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982, 1982 c. 24.
- (e) remuneration under a protective award made by an industrial tribunal under section 101 of the Employment Protection Act 1975 (redundancy dismissal with compensation), 1975 c. 44.

(3) For the purposes of paragraph 5(2) of Part I of this Schedule, holiday remuneration shall be deemed, in the case of a person whose employment has been terminated by or in consequence of the award of sequestration of his employer's estate, to have accrued to that person in respect of any period of employment if, by virtue of that person's contract of employment or of any enactment (including an order made or direction given under any enactment), that remuneration would have accrued in respect of that period if that person's employment had continued until he became entitled to be allowed the holiday.

SCH. 3 (4) Without prejudice to the preceding provisions of this paragraph—

- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or, as the case may be, salary in respect of services rendered to the debtor in that period ; and
- (b) references in this paragraph to remuneration in respect of a period of holiday include references to any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social services as earnings in respect of that period.

Transitional Provisions

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

Section 56.

SCHEDULE 4

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 the offer of composition along with a report thereon to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy.

3. The commissioners or, if there are no commissioners, the Accountant in Bankruptcy—

- (a) if they consider (or he considers) that the offer of composition will be timeously implemented and that, if the rules set out in section 51 of, and Schedule 1 to, this Act were applicable, its implementation would secure payment of a dividend of at least 25p in the £ in respect of the ordinary debts ; and

- (b) if satisfied with the caution or other security specified in the offer,

shall recommend that the offer should be placed before the creditors.

4. Where a recommendation is made that the offer of composition should be placed before the creditors, the permanent trustee shall—

- (a) intimate the recommendation to the debtor and record it in the sederunt book ;
- (b) publish in the Edinburgh Gazette a notice stating that an offer of composition has been made and where its terms may be inspected ;

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- (c) invite every creditor known to him to accept or reject the offer by completing a prescribed form sent by the permanent trustee with the invitation and returning the completed form to him ; and
- (d) send along with the prescribed form a report—
- (i) summarising the offer and the present state of the debtor's affairs and the progress in realising his estate ; and
 - (ii) estimating, if the offer is accepted, the expenses to be met in concluding the sequestration proceedings and the dividend which would be payable in respect of the ordinary debts if the rules set out in section 51 of, and Schedule 1 to, this Act were applied.

5.—(1) The permanent trustee shall determine from the completed prescribed forms duly received by him that the offer of composition has been accepted by the creditors, if a majority in number and not less than two-thirds in value of the creditors known to him have accepted it, and otherwise shall determine that they have rejected it.

(2) For the purposes of this paragraph, a prescribed form shall be deemed to be duly received by the permanent trustee if it is received by him not later than 14 days after the date on which it was sent to the creditor.

(3) The permanent trustee shall intimate in writing his determination under this paragraph to the debtor and any other person by whom the offer of composition was made and shall insert his determination in the sederunt book.

6. Where the permanent trustee determines that the creditors have accepted the offer of composition, he shall submit to the sheriff—

- (a) a statement that he has so determined ;
- (b) a copy of the report mentioned in paragraph 4(d) of this Schedule ; and
- (c) a declaration by the debtor as to the matters mentioned in sub-paragraphs (i) and (ii) of section 54(4)(b) of this Act.

7.—(1) The sheriff shall, on the receipt by him of the documents mentioned in paragraph 6 of this Schedule, fix a date and time for a hearing to consider whether or not to approve the offer of composition.

(2) The permanent trustee shall then send to every creditor known to him a notice in writing stating—

- (a) that he has determined that the creditors have accepted the offer of composition ;
- (b) that a hearing has been fixed by the sheriff to consider whether or not to approve the offer ;
- (c) the place, date and time of the hearing ; and

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- (d) that the recipient of the notice may make representations at the hearing as to whether or not the offer of composition should be approved.

8.—(1) At the hearing the sheriff shall examine the documents and hear any representations and thereafter shall make an order—

- (a) if he is satisfied that a majority in number and not less than two-thirds in value of the creditors known to the permanent trustee have accepted the offer of composition and that the terms of the offer are reasonable, approving the offer; and
- (b) if he is not so satisfied, refusing to approve the offer of composition.

(2) The sheriff may make an order approving the offer of composition, notwithstanding that there has been a failure to comply with any provision of this Schedule.

(3) The debtor or any creditor may within 14 days of the order being made appeal against an order approving or refusing to approve the offer of composition.

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 intrusions with the debtor's estate for audit and a claim for the outlays reasonably incurred by him and for his remuneration; and where the said documents are submitted to the commissioners, he shall send a copy of them to the Accountant in Bankruptcy;
- (b) take all reasonable steps to ensure that the interim trustee (where he is a different person) has submitted, or submits, to the Accountant in Bankruptcy his accounts and his claim for his outlays and remuneration.

(2) Subsections (3), (4), (6) and (10) of section 53 of this Act shall apply, subject to any necessary modifications, in respect of the accounts and claim submitted under sub-paragraph (1)(a) above as they apply in respect of the accounts and claim submitted under section 53(1) of this Act.

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 that satisfactory provision has been made in respect of the payment of such charges;
- (b) by or on behalf of the debtor, the bond of caution or other security for payment of the composition.

11. Once the documents have been lodged under paragraph 10 of this Schedule, the sheriff shall make an order discharging the debtor and the permanent trustee; and subsection (7) of section 54

of this Act shall apply in relation to an order under this paragraph as it applies in relation to an order under subsection (6) of that section.

12. An order under paragraph 11 of this Schedule discharging the permanent trustee shall have the effect of discharging him from all liability (other than any liability arising from fraud) to the creditors or to the debtor in respect of any act or omission of the permanent trustee in exercising the functions conferred on him by this Act.

13. Notwithstanding that an offer of composition has been made, the sequestration shall proceed as if no such offer of composition has been made until the discharge of the debtor becomes effective; and the sequestration shall thereupon cease.

14. A creditor who has not submitted a claim under section 48 of this Act before the sheriff makes an order approving an offer of composition shall not be entitled to make any demand against a person offering the composition on behalf of the debtor or against a cautioner in the offer; but this paragraph is without prejudice to any right of such a creditor to a dividend out of the debtor's estate equal to the dividend which creditors of the same class are entitled to receive under the composition.

15. A debtor may make two, but no more than two, offers of composition in the course of a sequestration.

16. On an order under paragraph 11 of this Schedule discharging the debtor becoming effective—

- (a) the debtor shall be re-invested in his estate as existing at the date of the order;
- (b) the debtor shall, subject to paragraph 14 of this Schedule, be discharged of all debts for which he was liable at the date of sequestration (other than any debts mentioned in section 55(2) of this Act); and
- (c) the claims of creditors in the sequestration shall be converted into claims for their respective shares in the composition.

17.—(1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may recall the order of the sheriff approving the offer of composition and discharging the debtor and the permanent trustee where it is satisfied—

- (a) that there has been, or is likely to be, default in payment of the composition or of any instalment thereof; or
- (b) that for any reason the composition cannot be proceeded with or cannot be proceeded with without undue delay or without injustice to the creditors.

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(2) The effect of a decree of recall under this paragraph where the debtor has already been discharged shall be to revive the sequestration:

Provided that the revival of the sequestration shall not affect the validity of any transaction which has been entered into by the debtor since his discharge with a person who has given value and has acted in good faith.

(3) Where the permanent trustee has been discharged, the Court may, on pronouncing a decree of recall under this paragraph, appoint a judicial factor to administer the debtor's estate, and give the judicial factor such order as it thinks fit as to that administration.

(4) The clerk of court shall send a copy of a decree of recall under this paragraph to the permanent trustee or judicial factor for insertion in the sederunt book.

18.—(1) Without prejudice to any rule of law relating to the reduction of court decrees, the Court of Session, on the application of any creditor, may reduce an order under paragraph 11 of this Schedule discharging a debtor where it is satisfied that a payment was made or a preference granted or that a payment or preference was promised for the purpose of facilitating the obtaining of the debtor's discharge.

(2) The Court may, whether or not it pronounces a decree of reduction under this paragraph, order a creditor who has received a payment or preference in connection with the debtor's discharge to surrender the payment or the value of the preference to the debtor's estate.

(3) Where the permanent trustee has been discharged, the Court may, on pronouncing a decree of reduction under this paragraph, appoint a judicial factor to administer the debtor's estate, and give the judicial factor such order as it thinks fit as to that administration.

(4) The clerk of court shall send a copy of a decree of reduction under this paragraph to the permanent trustee or judicial factor for insertion in the sederunt book.

Section 59.

SCHEDULE 5

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 by and his remuneration fixed by the Accountant in Bankruptcy.

Registration of notice of inhibition

SCH. 5

2.—(1) The trustee, from time to time after the trust deed has been delivered to him, may cause a notice in such form as shall be prescribed by the Court of Session by act of sederunt to be recorded in the register of inhibitions and adjudications ; and such recording shall have the same effect as the recording in that register of letters of inhibition against the debtor.

(2) The trustee, after the debtor's estate has been finally distributed among his creditors or the trust deed has otherwise ceased to be operative, shall cause to be so recorded a notice in such form as shall be prescribed as aforesaid recalling the notice recorded under sub-paragraph (1) above.

Lodging of claim to bar effect of limitation of actions

3. The submission of a claim by a creditor to the trustee acting under a trust deed shall bar the effect of any enactment or rule of law relating to limitation of actions in any part of the United Kingdom.

Valuation of claims

4. Unless the trust deed otherwise provides, Schedule 1 to this Act shall apply in relation to a trust deed as it applies in relation to a sequestration but subject to the following modifications—

- (a) in paragraphs 1, 2 and 5 for the word “sequestration” wherever it occurs there shall be substituted the words “granting of the trust deed” ;
- (b) in paragraph 3—
 - (i) in sub-paragraph (2), for the words from the beginning of paragraph (a) to “or sheriff” there shall be substituted the words “the trustee” ; and
 - (ii) in sub-paragraph (3), for the reference to the permanent trustee there shall be substituted a reference to the trustee ;
- (c) paragraph 4 shall be omitted ; and
- (d) in paragraph 5(2) for the references to the permanent trustee there shall be substituted references to the trustee.

Protected trust deeds

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 disqualified under section 24(2) of this Act from acting as permanent trustee if the debtor's estate were being sequestrated ;
- (b) the trustee, forthwith after the trust deed has been delivered to him, both publishes in the Edinburgh Gazette and sends to every creditor known to him a notice in the prescribed form—
 - (i) stating that the trust deed has been granted by the debtor ; and

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- (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 the accession of creditors as required by sub-paragraph (c) above has been obtained.
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 unduly prejudicial to a creditor or class of creditors.
- (2) The court may award sequestration in pursuance of sub-paragraph (1)(a) above if it considers that to do so would be in the best interests of the creditors.
- (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 in respect of which paragraphs 6 and 7 of this Schedule apply is referred to as a "protected trust deed".
9. Where the trustee under a protected trust deed has made the final distribution of the estate among the creditors, he shall, not more than 28 days after the final distribution, send to the Accountant in Bankruptcy for registration in the register of insolvencies—
- (a) a statement in the prescribed form indicating how the estate was realised and distributed ; and
- (b) a certificate to the effect that the distribution was in accordance with the trust deed.
10. Where the trustee under a protected trust deed has obtained a discharge from the creditors who have acceded to the trust deed he shall forthwith give notice of the discharge—
- (a) by sending the notice by recorded delivery to every creditor known to him who has not acceded to the trust deed ; and

(b) by sending the notice to the Accountant in Bankruptcy who shall register the fact of the discharge in the register of insolvencies,

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and, except where the court makes an order under paragraph 12 below, the sending of such notice to a creditor who has not acceded to the trust deed shall be effective to make the discharge binding upon that creditor.

Creditors not acceding to protected trust deed

11. A creditor who has not acceded to a protected trust deed may, not more than 28 days after notice has been sent under paragraph 10 above, apply to the court for an order under paragraph 12 below.

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

13. Where the court makes an order under paragraph 12 above, the clerk of court shall send a copy of the order to—

(a) the trustee ; and

(b) the Accountant in Bankruptcy who shall register the copy of the order in the register of insolvencies.

SCHEDULE 6

Section 66.

MEETINGS OF CREDITORS AND COMMISSIONERS

PART I

MEETINGS OF CREDITORS OTHER THAN
THE STATUTORY MEETING

Calling of meeting

1. The permanent trustee shall call a meeting of creditors if required to do so by—

(a) order of the court ;

(b) one-tenth in number or one-third in value of the creditors ;

(c) a commissioner ; or

(d) the Accountant in Bankruptcy.

2. A meeting called under paragraph 1 above shall be held not later than 28 days after the issuing of the order of the court under sub-paragraph (a) of that paragraph or the receipt by the permanent trustee of the requirement under sub-paragraph (b), (c) or (d) thereof.

3. The permanent trustee or a commissioner who has given written notice to him may at any time call a meeting of creditors.

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4. The permanent trustee or a commissioner calling a meeting under paragraph 1 or 3 above shall, not less than 7 days before the date fixed for the meeting, notify—

(a) every creditor known to him ; and

(b) the Accountant in Bankruptcy,

of the date, time and place fixed for the holding of the meeting and its purpose.

5.—(1) Where a requirement has been made under paragraph 1 above but no meeting has been called by the permanent trustee, the Accountant in Bankruptcy may, of his own accord or on the application of any creditor, call a meeting of creditors.

(2) The Accountant in Bankruptcy calling a meeting under this paragraph shall, not less than 7 days before the date fixed for the meeting, take reasonable steps to notify the creditors of the date, time and place fixed for the holding of the meeting and its purpose.

6. It shall not be necessary to notify under paragraph 4 or 5 of this Schedule any creditor whose accepted claim is less than £50 or such sum as may be prescribed, unless the creditor has requested in writing such notification.

Role of permanent trustee at meeting

7.—(1) At the commencement of a meeting, the chairman shall be the permanent trustee who as chairman shall, after carrying out his duty under section 49(1) of this Act, invite the creditors to elect one of their number as chairman in his place and shall preside over the election.

(2) If a chairman is not elected in pursuance of this paragraph, the permanent trustee shall remain the chairman throughout the meeting.

(3) The permanent trustee shall arrange for a record to be made of the proceedings at the meeting and he shall insert the minutes of the meeting in the sederunt book.

Appeals

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

PART II

ALL MEETINGS OF CREDITORS

Validity of proceedings

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

Locus of meeting

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

Mandatories

11.—(1) A creditor may authorise in writing any person to represent him at a meeting.

(2) A creditor shall lodge any authorisation given under sub-paragraph (1) above with the interim trustee or, as the case may be, the permanent trustee before the commencement of the meeting.

(3) Any reference in paragraph 7(1) of this Schedule and the following provisions of this Part of this Schedule to a creditor shall include a reference to a person authorised by him under this paragraph.

Quorum

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

Voting at meeting

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

Objections by creditors

14.—(1) The chairman at any meeting may allow or disallow any objection by a creditor, other than (if the chairman is not the permanent trustee) an objection relating to a creditor's claim.

(2) Any person aggrieved by the determination of the chairman in respect of an objection may appeal therefrom to the sheriff.

(3) If the chairman is in doubt whether to allow or disallow an objection, the meeting shall proceed as if no objection had been made, except that for the purposes of appeal the objection shall be deemed to have been disallowed.

Adjournment of meeting

15.—(1) If no creditor has appeared at a meeting at the expiry of a period of half an hour after the time appointed for the commencement of the meeting, the chairman shall adjourn the meeting to such other day as the chairman shall appoint, being not less than 7 nor more than 21 days after the day on which the meeting was adjourned.

(2) The chairman may, with the consent of a majority in value of the creditors who vote on the matter, adjourn a meeting.

(3) Any adjourned meeting shall be held at the same time and place as the original meeting, unless in the resolution for the adjournment of the meeting another time or place is specified.

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Minutes of meeting

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

PART III

MEETINGS OF COMMISSIONERS

17. The permanent trustee may call a meeting of commissioners at any time, and shall call a meeting of commissioners—

(a) on being required to do so by order of the court ; or

(b) on being requested to do so by the Accountant in Bankruptcy or any commissioner.

18. If the permanent trustee fails to call a meeting of commissioners within 14 days of being required or requested to do so under paragraph 17 of this Schedule, a commissioner may call a meeting of commissioners.

19. The permanent trustee shall give the commissioners at least 7 days notice of a meeting called by him, unless the commissioners decide that they do not require such notice.

20. The permanent trustee shall act as clerk at meetings and shall insert a record of the deliberations of the commissioners in the sederunt book.

21. If the commissioners are considering the performance of the functions of the permanent trustee under any provision of this Act, he shall withdraw from the meeting if requested to do so by the commissioners ; and in such a case a commissioner shall act as clerk, shall transmit a record of the deliberations of the commissioners to the permanent trustee for insertion in the sederunt book and shall authenticate the insertion when made.

22. The quorum at a meeting of commissioners shall be one commissioner and the commissioners may act by a majority of the commissioners present at the meeting.

23. Any matter may be agreed by the commissioners without a meeting if such agreement is unanimous and is subsequently recorded in a minute signed by the commissioners ; and that minute shall be inserted by the permanent trustee in the sederunt book.

Section 75(1).

SCHEDULE 7

PART I

CONSEQUENTIAL AMENDMENTS

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

1. In section 3 (interpretation), for the words "section 14 or 163 of the Bankruptcy (Scotland) Act 1913" there shall be substituted the words "section 11A of the Judicial Factors (Scotland) Act 1889".

1889 c. 39.

The Bankruptcy Act 1883 (c.52)

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2.—(1) In subsection (1) of section 32 after the words “adjudged bankrupt” there shall be inserted the words “or his estate has been sequestrated”.

(2) After subsection (2) of that section there shall be inserted the following subsection

“(2A) The disqualifications to which a debtor whose estate has been sequestrated in Scotland is subject shall cease to have effect if and when—

- (a) the award of sequestration is recalled or reduced; or
- (b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.”.

(3) After section 34 there shall be inserted the following section—

“Extent of Part II. 34A. This Part of this Act (except section 34 above) shall extend to Scotland.”.

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

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

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

“Applica-
tion for
judicial
factor on
estate of
person
deceased.

11A.—(1) It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to the Court of Session or to the sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor.

(2) After such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Court or sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with this Act and the Judicial Factors (Scotland) Act 1880 and relative acts of sederunt; and, if the deceased's estate is absolutely insolvent within the meaning of section 73(2) of the Bankruptcy (Scotland) Act 1985, section 51 of, and Schedule 1 to, that Act shall apply as if for references to—

- (a) the interim trustee or permanent trustee there were substituted references to the judicial factor; and
- (b) the date of sequestration there were substituted

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references to the date of the judicial factor's appointment.

Judicial factor's duties to be regulated by act of sederunt.

11B. The Court of Session shall have full power to regulate by act of sederunt—

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

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

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

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

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

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

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

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

The Exchange Control Act 1947 (c.14)

7. In paragraph 7 of the Fourth Schedule (application of that Schedule to Scotland), for sub-paragraph (4) there shall be substituted the following sub-paragraph—

“(4) In paragraph 6, for the words from ‘complies’ to ‘creditor’s debt’ there shall be substituted the words ‘is a debt which would allow a creditor to be a qualified creditor in accordance with the requirements of subsection (4) of section 5 of the Bankruptcy (Scotland) Act 1985, be a debt in respect of which a creditor may present a petition for sequestration’.”

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

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

The Superannuation Act 1972 (c.11)

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

The Road Traffic Act 1972 (c.20)

10. In section 150(2) (effect of bankruptcy of insured or secured persons)—

- (a) the words from "company" to "and", where it first occurs, shall be omitted; and
- (b) for the words from "163" to "1913" there shall be substituted the words "11A of the Judicial Factors (Scotland) Act 1889".

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

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

- "(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act 1985 (or those sections as applied by section 613 of the Companies Act 1985); or
- (c) by a creditor to the trustee acting under a trust deed as defined in section 5(2)(c) of the Bankruptcy (Scotland) Act 1985;".

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

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

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

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The Social Security Pensions Act 1975 (c.60)

13. In section 58 of the Social Security Pensions Act 1975 (under which Schedule 3 to that Act has effect for giving priority in bankruptcy etc. to certain debts) after the word "effect" there shall be inserted the words "for the purposes, in respect of the sequestration of estates in Scotland, of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (preferred debts)"; and, for the purposes of the sequestration of a debtor's estate in Scotland, Schedule 3 to the said Act of 1975 shall have effect as if—

- (i) in paragraph 3(1), for the words "a person going into liquidation or being adjudged bankrupt" there were substituted the words "the sequestration of a debtor's estate"; and
- (ii) in paragraph 4, for the words "Schedule 4 to the Insolvency" there were substituted the words "Part I of Schedule 3 to the Bankruptcy (Scotland)".

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

14.—(1) In section 106(6) (payments out of fund to employees), in paragraph (b) for the words from "163" to "1913" there shall be substituted the words "11A of the Judicial Factors (Scotland) Act 1889".

(2) In section 122(8) (employee's rights on insolvency of employer), for the word "admitted" there shall be substituted the word "accepted".

(3) 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 51 of the Bankruptcy (Scotland) Act 1985; and".

(4) In section 127(2)(b) (interpretation) for the words from "163" to "1913" there shall be substituted the words "11A of the Judicial Factors (Scotland) Act 1889".

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

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

The Banking Act 1979 (c.37)

16. In section 28 (payments to depositors on institution's insolvency)—

(a) in subsection (6)—

- (i) in paragraph (a), after the word "proved" there shall be inserted the words "or whose claim has been accepted in the sequestration"; and

(ii) in paragraph (b)(iii), for the words "72" and "1913" there shall be substituted, respectively, the words "30" and "1985"; and

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(b) in subsection (7)(c)—

(i) the words from "where" to "court," shall cease to have effect; and

(ii) for the words "deed of arrangement or other settlement or arrangement by way" there shall be substituted the words "trust deed, contract of composition or offer".

The Estate Agents Act 1979 (c.38)

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

The Value Added Tax Act 1983 (c.55)

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

The Companies Act 1985 (c.6)

19.—(1) In section 613 (ranking of claims in Scotland)—

(a) in subsection (1), for the words from "following provisions" to the end of paragraph (c) there shall be substituted the words—

"following enactments—

(a) sections 22 (except subsection (8)), 23(1) and (2), 48 (except in so far as it relates to the application of section 22(8)), 49 and 50 of, and Schedule 1 to, the Bankruptcy (Scotland) Act 1985 (claims by creditors for voting and payment of dividends);

(b) paragraphs 11 and 13 of Schedule 6 to that Act (voting at meetings);

(c) section 60 of that Act (liabilities and rights of co-obligants); and

(d) sections 8(5) and 22(8) of that Act (including section 22(8) as applied by section 48(7) of that Act);" and

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(b) in subsection (2)—

- (i) for the word “ 1913 ” there shall be substituted the word “ 1985 ” ;
- (ii) for the word “ trustee ” there shall be substituted the words “ interim or permanent trustee ” ; and
- (iii) for the word “ bankrupt ” there shall be substituted the word “ debtor ” .

20. After section 615 there shall be inserted the following sections—
 “**Gratuitous alienations.** 615A.—(1) Where this subsection applies and—

- (a) the winding up of a company has commenced, an alienation by the company is challengeable by—
 - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement ; or
 - (ii) the liquidator ;
 - (b) an administration order is in force in relation to a company, an alienation by the company is challengeable by the administrator.
- (2) Subsection (1) applies where—
- (a) by the alienation, whether before or after the coming into force of section 75 of the Bankruptcy (Scotland) Act 1985, any part of the company’s property is transferred or any claim or right of the company is discharged or renounced ; and
 - (b) the alienation takes place on a relevant day.
- (3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual ; and in that subsection “ relevant day ” means, if the alienation has the effect of favouring—

- (a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act 1985) of the company, a day not earlier than 5 years before the date on which—
 - (i) the winding up of the company commences ; or
 - (ii) as the case may be, the administration order is made ; or
- (b) any other person, a day not earlier than 2 years before such date.

(4) Subsections (4) to (6) and (8) of section 34 of the Bankruptcy (Scotland) Act 1985 (challenge of gratuitous alienation) 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 there is substituted a reference to the company ; and

(b) in subsection (8) for the words from the beginning to " 1889 " there are substituted the words " A liquidator and, after the coming into force of Chapter III of Part II of the Insolvency Act 1985, an administrator appointed thereunder ".

(5) In subsections (1) to (3) above, any reference to an administrator or to an administration order—

(a) shall be construed in accordance with Chapter III of Part II of the Insolvency Act 1985 ; and

(b) shall be of no effect until the coming into force of that Chapter.

(6) This section extends to Scotland only.

Unfair preferences.

615B.—(1) Section 36 of the Bankruptcy (Scotland) Act 1985 (unfair preferences) applies for the purposes of this Act as it applies for the purposes of that Act but as if—

(a) for any reference to a debtor there is substituted a reference to a company ;

(b) in subsection (1), for paragraphs (a) to (c) there are substituted the words " the commencement of the winding up of the company or the making of an administration order in relation to the company. " ;

(c) in subsection (4) for paragraphs (a) and (b) there are substituted the following paragraphs—

" (a) in the case of a winding up—

(i) any creditor who is a creditor by virtue of a debt incurred on or before the date of commencement of the winding up ; or

(ii) the liquidator ; and

(b) in the case of an administration order, the administrator. " ;

(d) in subsection (6), for the words from the beginning to " 1889 " there are substituted the words " A liquidator and an administrator " ; and

(e) for subsection (7) there is substituted the following subsection—

" (7) This section shall be construed as one with Part XX of the Companies Act 1985 ; and subsection (5) of section 615A of that Act shall apply in relation to the foregoing provisions of this section as it applies in relation to subsections (1) to (3) of that section. ".

(2) This section applies to Scotland only."

21. For subsections (1) to (5) of section 623 (effect of diligence within 60 days of winding up Scottish company), there shall be substituted the following subsections—

" (1) In the winding up of a company registered in Scotland,

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the following provisions of the Bankruptcy (Scotland) Act 1985—

- (a) subsections (1) to (6) of section 37 (effect of sequestration on diligence); and
- (b) subsections (3), (4), (7) and (8) of section 39 (realisation of estate),

apply, so far as is consistent with this Act, in like manner as they apply in the sequestration of a debtor's estate, with the substitutions specified below and with any other necessary modifications.

(2) The substitutions to be made in those sections of the Act of 1985 are as follows—

- (a) for references to the debtor, substitute references to the company,
- (b) for references to the sequestration, substitute references to the winding up,
- (c) for references to the date of sequestration, substitute references to the commencement of the winding up of the company, and
- (d) for references to the permanent trustee, substitute references to the liquidator.

(3) In this section, “the commencement of the winding up of the company” means, where it is being wound up by the court, the day on which the winding up order is made.”

22. In section 643 (unclaimed dividends etc. in Scotland to be lodged in bank)—

- (a) for the words “a joint stock bank of issue in Scotland” there shall be substituted the words “an appropriate bank or institution as defined in section 73(1) (interpretation) of the Bankruptcy (Scotland) Act 1985”;
- (b) after the word “bank” wherever it occurs there shall be inserted the words “or institution”; and
- (c) for the words “one hundred and fifty-three of the Bankruptcy (Scotland) Act 1913” there shall be substituted the words “58 of the Bankruptcy (Scotland) Act 1985”.

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

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

PART II

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

Arrestments and POUNDINGS

24.—(1) Subject to sub-paragraph (2) below, all arrestments and poundings which have been executed within 60 days prior to the constitution of the apparent insolvency of the debtor, or within four

months thereafter, shall be ranked *pari passu* as if they had all been executed on the same date.

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(2) Any such arrestment which is executed on the dependence of an action shall be followed up without undue delay.

(3) Any creditor judicially producing in a process relative to the subject of such arrestment or pouncing liquid grounds of debt or decree of payment within the 60 days or four months referred to in sub-paragraph (1) above shall be entitled to rank as if he had executed an arrestment or a pouncing; and if the first or any subsequent arrester obtains in the meantime a decree of furthcoming, and recovers payment, or a pouncing creditor carries through a sale, he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable in an action at their instance for payment to them proportionately, after allowing out of the fund the expense of such recovery.

(4) Arrestments executed for attaching the same effects of the debtor after the period of four months subsequent to the constitution of his apparent insolvency shall not compete with those within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached in accordance with any enactment or rule of law relating thereto.

(5) Any reference in the foregoing provisions of this paragraph to a debtor shall be construed as including a reference to an entity whose apparent insolvency may, by virtue of subsection (5) of section 7 of this Act, be constituted under subsection (1) of that section.

(6) This paragraph shall apply in respect of arrestments and pouncings which have been executed either before or after the coming into force of this paragraph.

(7) The repeal of the Bankruptcy (Scotland) Act 1913 shall not affect the equalisation of arrestments and pouncings (whether executed before or after the coming into force of this paragraph) in consequence of the constitution of notour bankruptcy under that Act.

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

25. Any—

- (a) conveyance, assignation, instrument, discharge, writing, or deed relating solely to the estate of a debtor which has been or may be sequestrated, either under this or any former Act, being estate which after the execution of such conveyance, assignation, instrument, discharge, writing, or deed, shall be and remain the property of such debtor, for the benefit of his creditors, or the interim or permanent trustee appointed or chosen under or by virtue of such sequestration,
- (b) discharge to such debtor,
- (c) deed, assignation, instrument, or writing for reinvesting the debtor in the estate,

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- (d) article of roup or sale, or submission,
 - (e) other instrument or writing whatsoever relating solely to the estate of any such debtor ; and
 - (f) other deed or writing forming part of the proceedings ordered under such sequestration,
- shall be exempt from all stamp duties or other Government duty.

SCHEDULE 8

Section 75(2)

REPEALS

Chapter	Short title	Extent of repeal
1621 c. 18.	The Bankruptcy Act 1621.	The whole Act.
1696 c. 5.	The Bankruptcy Act 1696.	The whole Act.
31 & 32 Vict. c. 101.	The Titles to Land Consolidation (Scotland) Act 1868.	Section 148.
44 & 45 Vict. c. 21.	The Married Women's Property (Scotland) Act 1881.	Section 1(4).
52 & 53 Vict. c. 39.	The Judicial Factors (Scotland) Act 1889.	In section 5, the words “, and of the Bankruptcy Acts and Cessio Acts,” and the words “and accountant in bankruptcy respectively,”. In section 14, the proviso. Sections 15 and 16. Section 22. Section 36.
57 & 58 Vict. c. 60.	The Merchant Shipping Act 1894.	Section 36.
3 & 4 Geo. 5 c. 20.	The Bankruptcy (Scotland) Act 1913.	The whole Act.
10 & 11 Geo. 5 c. 64.	The Married Women's Property (Scotland) Act 1920.	In section 5, the proviso.
14 & 15 Geo. 5 c. 27.	The Conveyancing (Scotland) Act 1924.	In section 44, in subsection (4) paragraphs (a) and (b); and in subsection (6) the words “and section 44 of the Bankruptcy (Scotland) Act 1913”.
20 & 21 Geo. 5 c. 25.	The Third Parties (Rights Against Insurers) Act 1930.	In section 4, paragraph (a).
10 & 11 Geo. 6 c. 47.	The Companies Act 1947.	Sections 91 and 115.
11 & 12 Geo. 6 c. 39.	The Industrial Assurance and Friendly Societies Act 1948.	In section 2(4), the words “where the receiving order or the award of sequestration of his estate was made after the passing of this Act”.
15 & 16 Geo. 6 & 1 Eliz. 2. c. 33.	The Finance Act 1952.	In section 30, subsections (4) and (6).
1965 c. 25.	The Finance Act 1965.	In Schedule 10, paragraph 15(1).
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, paragraph 22.
1970 c. 10.	The Income and Corporation Taxes Act 1970.	In Part II of Schedule 15, the entry relating to the Finance Act 1952.

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Chapter	Short title	Extent of repeal
1972 c. 20.	The Road Traffic Act 1972.	In section 150(2), the words "company" includes a limited partnership, and "
1974 c. 46.	The Friendly Societies Act 1974.	In section 59, in subsection (1)(a) the words "or bankruptcy"; in subsection (2) the words "or trustee in bankruptcy"; and subsections (3) and (4).
1975 c. 14.	The Social Security Act 1975.	In Schedule 18, paragraph 1(1)(b) and (2)(b).
1975 c. 18.	The Social Security (Consequential Provisions) Act 1975.	In Schedule 2, paragraph 1.
1975 c. 45.	The Finance (No. 2) Act 1975.	In section 71(6), the words "section 30 of the Finance Act 1952".
1975 c. 60.	The Social Security Pensions Act 1975.	In Schedule 4, paragraph 1.
1976 c. 24.	The Development Land Tax Act 1976.	In section 42, subsection (1), so far as it relates to bankruptcy in Scotland; and subsection (4)(a).
1976 c. 60.	The Insolvency Act 1976.	In section 5, subsections (3) and (4). In Schedule 1, in Part I, the entries relating to the Bankruptcy (Scotland) Act 1913; and, in Part II, paragraphs 1(a), 2(a), 4 and 5(b).
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	Section 121(1)(b).
1979 c. 37.	The Banking Act 1979.	In section 28(7)(c) the words "where the sequestration is declared at an end by a competent court".
1979 c. 54.	The Sale of Goods Act 1979.	In section 61(4), the words ", and whether he has become a notour bankrupt or not".
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 12.
1981 c. 59.	The Matrimonial Homes (Family Protection) (Scotland) Act 1981.	Section 10.
1981 c. 63.	The Betting and Gaming Duties Act 1981.	In section 30, subsections (1) and (2).
1983 c. 53.	The Car Tax Act 1983.	In Schedule 1, paragraph 4.
1983 c. 55.	The Value Added Tax Act 1983.	In Schedule 7, paragraph 12.
1985 c. 6.	The Companies Act 1985.	In section 665, the words "(whether limited or not)"; and in paragraph (d) the words "registered in England and Wales or Northern Ireland".

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Chapter	Short title	Extent of repeal
1985 c. 17.	The Reserve Forces (Safe-guard of Employment) Act 1985.	In section 13, the word “—(a)”; the words from “ or, (b) ” to “ estate, ”; the word “—(i)”; and the words from “ or, (ii) ” to “ 1913, ”.

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