Notes for Guidance for Trustees

Bankruptcy (Scotland) Act 1985 (as amended)

April 2015
NOTES FOR GUIDANCE FOR TRUSTEES
(Bankruptcies granted on and after 1 April 2015)

This Guidance describes the general functions of The Accountant in Bankruptcy and Depute Accountant, interim trustees, trustees and commissioners in relation to their responsibilities regarding bankruptcies which started on or after 1 April 2015.

It also contains details of the legislation that applies to bankruptcies which started on or after 1 April 2015, and provides details for interim trustees, trustees and Commissioners, of the processes The Accountant considers should be applied during the administration of these bankruptcies.

NOTES FOR GUIDANCE FOR TRUSTEES

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PART 1

PRINCIPLES AND MATTERS OF COMMON APPLICATION
(Effective from 1 April 2015)

This part describes the general functions of The Accountant in Bankruptcy, the Depute Accountant in Bankruptcy, interim trustees, trustees and commissioners in relation to the bankruptcy process. It also describes the role of Accountant in Bankruptcy (AiB), an Agency of the Scottish Government. The AiB operates independently and impartially whilst remaining directly accountable to Scottish Ministers.

For the purposes of clarity the following terminology is used throughout these Notes for Guidance:

“AiB” refers to the organisation which is an Agency of the Scottish Government.

“The Accountant ” refers to the individual appointed by Scottish Ministers under section 1(1) of the Bankruptcy (Scotland) Act 1985 (as amended) and who acts as an officer of the court with responsibilities that include determining debtor applications, granting awards of bankruptcy and the additional functions conferred in the April 2015 legislation. These additional functions are listed under the “officer of court” heading in section 1.2 below. The Accountant also performs supervisory and regulatory roles which are described in further detail in section 1.2 below.

“The Accountant in Bankruptcy” refers to the role undertaken by The Accountant as trustee in the administration of bankruptcies.

The Accountant is independent as regards the exercise of their statutory functions, although their decisions and determinations can generally be appealed to the court. The Scottish Ministers, after consultation with the Lord President of the Court of Session, may give The Accountant general directions as to the performance of their functions in relation to all bankruptcies or specific types of bankruptcies but they may not give directions in respect of any particular case.
1.1 AiB – general functions

- Policy Making
  
  AiB supports Ministers to develop and refine policy, developing the policy for personal insolvency and diligence in Scotland, and developing policy for the Debt Arrangement Scheme (DAS).

1.2 The Accountant – general functions

- Supervisory
  
  The Accountant supervises the performance of interim trustees, trustees and commissioners in the exercise of their statutory duties, and regulates the bankruptcy process generally.

  The Accountant regulates and supervises the registration and administration of Protected Trust Deeds (PTDs), including the performance of trustees.

  The Accountant updates notes for guidance for trustees in bankruptcies and for trustees in PTDs.

- Regulatory
  
  The Accountant is required to report to the sheriff any trustee or commissioner, where it appears they have failed without reasonable excuse to perform a duty imposed on them. Where there are reasonable grounds to suspect an offence has been committed The Accountant is required to report the matter to the Lord Advocate.

- Statutory
  
  The Accountant is responsible for maintaining the public Register of Insolvencies (RoI). This contains details of bankruptcies awarded by both the Scottish courts and by The Accountant. The Accountant also records PTDs, corporate insolvencies and Bankruptcy Restriction Orders (BRO’s) on the RoI.

  The Accountant is responsible for the registration of documents required to be filed by receivers and liquidators in terms of the Insolvency Act 1986. This function was transferred from the Registrar of Companies and the Assistant Registrar of Friendly Societies by the Scotland Act 1998, Schedule 8, p23(1), (2) and (3).

  The Accountant is required to produce Annual Accounts and an Annual Report to Scottish Ministers and the Court of Session giving statistical information about bankruptcies and PTDs and of the performance of The Accountant’s functions under The Act.
• **Debt Arrangement Scheme (DAS) – DAS Administrator**

The Accountant is responsible in the role as Administrator for the Debt Arrangement Scheme. The Accountant is responsible for the approval of money advisers, the approval of payment distributors and the approval of each Debt Payment Programme and any variations.

• **Officer of the Court**

The Accountant is responsible for determining debtor applications for bankruptcy and, where appropriate, granting the award of bankruptcy.

The Accountant can issue directions on application by a Trustee (section 3A refers).

The Accountant can make an order granting the conversion of a PTD to bankruptcy (section 59A-C refers).

The Accountant is responsible for setting and varying Debtor Contribution Orders (DCOs) (Section 32A refers).

Where The Accountant is not the original trustee, The Accountant can appoint a replacement trustee who has been elected at the Statutory meeting (Section 25 refers).

The Accountant can determine that a trustee is removed from office where they have ceased to be qualified to act, and can appoint a replacement trustee under this circumstance (Section 28A refers).

The Accountant can declare the post of trustee vacant on application of the commissioners or a person representing not less than one quarter in value of the creditors, or where satisfied that there are reasons to do so, and make arrangements for the continuation of the bankruptcy (Section 29 refers).

The Accountant can grant recall of the award of bankruptcy under certain circumstance (Section 17A refers).

The Accountant can rectify an error in bankruptcy administration and waive a time limit specified for any action in the Act (Section 63A refers).

The Accountant can award and annul BROs of up to, but not including, five years. Where a bankruptcy is recalled under section 17D(1) or 17E(6) The Accountant can annul a BRO (Sections 56A, 56E and 56J refer).

The Accountant can grant the deferral of the debtor’s discharge (Section 54 refers).

The Accountant can re-appoint a trustee where assets are discovered after the discharge of the debtor and the trustee (Section 58B refers).
• **Review function**

The Accountant is responsible for reviewing decisions made by their staff on application of an interested person. The Accountant’s independent review team will be responsible for investigating the review request and providing a fully informed outcome. This team will always be independent of the team responsible for the original decision.

1.2.1 **The Accountant’s independent review team function**

Interested parties, as prescribed in the appropriate sections of the Act, may apply to The Accountant’s independent review team for a review of a determination given by the Accountant. An application for a review may not be made:

(a) after the expiry of the period of 14 days beginning with the day on which notice of the determination by The Accountant is given,

(b) in relation to a matter on which The Accountant has applied to the Sheriff for a direction,

(c) for any other reason as prescribed in the appropriate section of the Act.

If an application for a review is made, The Accountant’s independent review team must take into account any representations made by the debtor, the trustee, any creditor or any other interested party before the expiry of the period of 21 days beginning with the day on which the application is made. The Accountant must confirm, amend or revoke the direction before the expiry of the period of 28 days beginning with the day on which the application is made.

An appeal may be made by those parties prescribed in the appropriate sections of the Act, to the Sheriff, against a decision by The Accountant before the expiry of the period of 14 days beginning with the day of the decision.

1.3 **The Accountant in Bankruptcy – general functions**

• **Acting as trustee**

By virtue of Section 2(1B) of the Act The Accountant in Bankruptcy will act as trustee in all bankruptcies awarded by The Accountant, where The Accountant does not appoint a person to be the trustee.

By virtue of Section 2(2C) of the Act, The Accountant in Bankruptcy will act as trustee in all bankruptcies where the court does not appoint a person to be trustee.
By virtue of Section 2(6)(b) of the Act The Accountant in Bankruptcy will act as interim trustee in bankruptcies except those where an interim trustee is nominated by the petitioner.

By virtue of Sections 28(5) (a) and 28A (2) (b) of the Act The Accountant in Bankruptcy will act as trustee on the resignation or death of the original trustee where no new trustee is nominated and elected.

1.4 **Documents to be sent to The Accountant**

In addition to a general duty to supply The Accountant with such information considered necessary to enable The Accountant to discharge their functions under the Act, interim trustees and trustees must supply The Accountant with certain specific documents at various stages in the bankruptcy process.

Without prejudice to The Accountant’s power to call upon trustees to supply any other form of document, check-lists of documents which will normally require to be sent to The Accountant in a bankruptcy are shown at Appendices H and I to these Notes.

1.5 **The Depute Accountant in Bankruptcy**

The Depute Accountant is appointed by the Scottish Ministers, in terms of Section 1(3) of the Act.

The Depute Accountant is empowered under that provision to exercise any and all of the functions of The Accountant in terms of the Act, at any time The Accountant is unable to do so.

1.6 **The trustee**

**Election or appointment of the trustee** - The trustee will be appointed by either a sheriff or The Accountant, on award of bankruptcy. A trustee must be a qualified insolvency practitioner and must have given an undertaking in writing that they will act as trustee in the bankruptcy.

A trustee is not required to reside in Scotland.

The trustee must decide whether or not to call a statutory meeting. If a meeting is called the appointment of the trustee will be confirmed by a vote of the creditors at the statutory meeting, or, if creditors wish an alternative trustee be appointed, they can instead elect a replacement trustee.

If there is no statutory meeting, or no creditors attend the statutory meeting, or if there is no election of a replacement trustee, the original trustee will continue to act as trustee.
A replacement trustee will be appointed in succession to another who has died, resigned or been removed from office.

1.6.1 **Functions of the trustee** - A trustee’s general functions are specified in Section 3 of the Act and include a duty to:

1. recover, manage and realise the debtor’s estate, whether situated in Scotland or elsewhere;

2. ascertain the reasons for the debtor’s insolvency and the circumstances surrounding it;

3. ascertain the state of the debtor’s assets and liabilities;

4. determine if there are reasonable grounds to believe the debtor’s behaviour was of a kind that would justify the granting of a BRO.

5. distribute any funds paid or realised from the debtor’s estate amongst the debtor’s creditors according to their respective entitlements;

6. maintain a sederunt book during their term of office for the purpose of providing an accurate record of the bankruptcy process;

7. keep regular accounts of their 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;

8. supply The Accountant with such information as they may consider is necessary to enable The Accountant to discharge their functions under section 3(1) of the Act, whether or not the trustee is still acting in the bankruptcy

However, the trustee is not required to undertake functions 1, 2, 3 and 5, above, if, in their view, it will not be of financial benefit to the estate of the debtor and in the interests of the creditors to do so (Section 3(8) of the Act refers).

A more detailed list and explanation of the functions of trustees and advice on their exercise is found at Part 2 of these Notes.

1.7 **The interim trustee**

Where a petition for bankruptcy is presented by a creditor or a trustee acting under a trust deed, the sheriff may appoint a qualified insolvency practitioner to act as interim trustee before bankruptcy is awarded, provided either:

- The debtor consents; or
• If the trustee acting under the trust deed or any creditor shows cause.

The sheriff will only appoint an interim trustee who meets the conditions specified in Section 2(3) of the Act. One of these conditions is that the nominated person must give an undertaking, in writing that they will act as the trustee in the bankruptcy. The form of this undertaking is prescribed as Form 4 of the Sheriff Court Bankruptcy Rules.

1.7.1 General functions of the interim trustee
An interim trustee’s general functions, as specified in Section 2(6A) of the Act, are to safeguard the debtor’s estate pending the determination of the petition for bankruptcy.

A more detailed explanation of the interim trustee’s functions and guidance as to their exercise is recorded in Part 3 of these Notes.

1.8 Commissioners
Creditors may elect up to five of their number to act as commissioners in the bankruptcy. Commissioners can be elected at the statutory meeting or any subsequent meetings of creditors.

1.8.1 General functions of commissioners
The general functions of commissioners are to supervise the intromissions of the trustee and, in terms of Section 4 of the Act, to give advice as to the exercise of those functions. The commissioners also have a duty to audit the trustee’s accounts of their intromissions and to determine their entitlement to remuneration and reimbursement of outlays.

1.8.2 Advice given by commissioners
In terms of Section 3(2) of the Act, in the performance of their functions the trustee is to ‘have regard to’ advice offered to him by the commissioners, where acting.

However, the trustee is not obliged to follow such advice if they consider it not to be of financial benefit to the estate of the debtor or not in the interests of the creditors. In such a case the commissioners, if so advised, could obtain the trustee’s compliance only through the intervention of the court, i.e. by making an application to a sheriff, in terms of Section 39(1) of the Act.

A more detailed explanation of the functions of commissioners will be found at Part 7 of these Notes.
PART 2

TRUSTEE

2.1 Specific duties of the trustee

As soon as possible after appointment, the trustee must notify the debtor of their appointment.

2.1.1 The trustee shall have regard to advice offered to him by the commissioners (if any). However, the trustee is not obliged to follow such advice where, in their view, it would not be of financial benefit to the estate of the debtor nor in the interests of the creditors to do so.

2.1.2 If the trustee has reasonable grounds to suspect that an offence has been committed in relation to a bankruptcy by:

- the debtor in respect of their assets, their dealings with them or their conduct in relation to their business or financial affairs; or

- a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in respect of the debtor's assets, business or financial affairs,

they are required to report the matter to The Accountant (Section 2.5.3 refers).

2.1.3 If a trustee has reasonable grounds to believe that any behaviour on the part of the debtor is of a kind that could result in a BRO being granted, the trustee is required to submit a report to The Accountant for investigation and consideration for appropriate BRO action (Appendix K). The Accountant may make an order of at least 2 years, however where they believe a BRO of 5 to 15 years is more appropriate, The Accountant will make an application to the sheriff for a decision (Section 6.3 refers).

2.1.4 A report made under Sections 2.5.3 or 6.3 of these Notes shall be absolutely privileged and details not disclosed.

2.1.5 Where the debtor, a creditor or any other person having an interest is dissatisfied with any act, omission or decision of the trustee, they may apply to the sheriff who may confirm, annul or modify any act or decision of the trustee or may give him directions or make such order as they think fit.

2.1.6 A trustee may apply to The Accountant for a direction in relation to any particular matter arising in the bankruptcy. The Application for Direction (Form 2) is prescribed in The Bankruptcy (Applications and decisions) (Scotland) Regulations 2014 (Section 3A refers).
The Accountant may, before giving a direction, refer the matter to the Sheriff by making an application for a direction in relation to that matter.

A trustee may apply to The Accountant's independent review team for a review of a direction given by The Accountant, however such an application may not be made:

(a) by an interim trustee,

(b) after the expiry of the period of 14 days beginning with the day on which notice of the direction by The Accountant is given to the trustee, or

(c) in relation to a matter on which the Accountant has applied to the sheriff for a direction.

If an application for a review is made The Accountant must take into account any representations made by the trustee, the debtor, any creditor and any other interested person before the expiry of the period of 21 days beginning with the day on which the application is made. The Accountant must confirm, amend or revoke the direction before the expiry of the period of 28 days beginning with the day on which the application is made.

A trustee may appeal to the Sheriff against a decision by The Accountant before the expiry of the period of 14 days beginning with the day of the decision.

2.2 Advertising appointments - Register of Insolvencies (RoI)

The RoI is a formal record of all bankruptcies and trust deeds awarded in Scotland, and of discharges, Public examinations and Bankruptcy Restriction Orders (BROs). The Accountant is responsible for updating and maintaining the RoI.

The RoI has a free search facility which can be accessed by anyone who has an interest, and it can be found on AiB’s website. A commercial daily data download service is available, and is subscribed to by the main credit reference agencies.

In accordance with Section 32(5A) of the Act, where a trustee knows, or becomes aware, of any estate vested in the trustee which comprises funds held by a bank, the trustee must serve a notice on the bank informing the bank of the bankruptcy, specifying reasonable detail in order to allow the bank to identify the debtor and the funds held (section 6.32 refers).

2.2.1 Any replacement trustee must inform The Accountant of their details and the RoI will be updated with the replacement trustee’s details.
2.2.2 Any trustee, or replacement trustee, who has published a notice in the Edinburgh Gazette advising of their appointment, may not charge the debtor’s estate for the cost of the advertisement.

2.3 Taking possession and recording of the estate by the trustee

Where the petitioner for bankruptcy is a creditor, or a trustee acting under a trust deed, the debtor is required, not later than seven days after having been notified of the appointed trustee, to send to the trustee a statement of assets and liabilities (Form 4), as prescribed in Schedule 1 of The Bankruptcy (Scotland) Regulations 2014. This should be submitted with a completed statement of undertakings, signed by the debtor. The trustee is required to assess the debtor’s income and expenditure using the Common Financial Tool (CFT) as set out in CFT regulations 2014, and provide a proposal for a Debtor Contribution Order (DCO) to The Accountant, not later than 6 weeks after the award of bankruptcy. The Accountant must fix a DCO in all cases, regardless of whether the CFT shows a nil surplus. A copy of the proposal form is at Appendix O to these Notes. The Accountant must make an order fixing the debtor’s contribution after considering the proposals sent by the trustee.

When a debtor applies for their own bankruptcy they must send with their debtor application an income and expenditure assessment which has been completed using the CFT. This must have been completed by an approved money advisor. In the case of a debtor application The Accountant must make an order fixing the amount of DCO at the same time as awarding the bankruptcy.

2.3.1 Any sum which is derived from a Social Security Benefit or tax credit cannot vest in the trustee (Section 6.19.5 refers). Where the debtor is in receipt of benefit only income, the trustee may provide evidence to support a zero DCO without providing a breakdown of the debtor’s expenditure.

Trustees must take care to clarify the most likely source of funds if there is any indication that they may be derived from Social Security benefits or tax credits. If a debtor inadvertently pays money to their trustee for the benefit of creditors from funds which were derived from Social Security benefits or tax credits, the trustee must return those funds to the debtor. This applies even if the payment is made voluntarily and in the full knowledge of the rules on the inalienability of Social Security benefits and tax credits.

2.3.2 If a debtor fails to provide the trustee with a complete and accurate statement of all their assets and liabilities (wherever they are kept and situated) including a signed statement of undertakings, the actions that can be taken by the trustee are detailed at Section 2.5 of these Notes.

2.3.3 Upon receipt of the debtor’s statement of assets and liabilities and the statement of undertakings, the trustee must prepare a statement of the debtor’s affairs. In terms of Section 20(1) of the Act, they are required to
indicate in their statement if, in their opinion, the debtor's assets are
unlikely to be sufficient to pay any dividend in respect of debts namely:

- preferred debts (excluding any interest which has accrued since
date of bankruptcy);

- ordinary debts, as detailed in Section 51(f) of the Act;

- interest, at the rate specified under Section 51(7) of the Act on (a)
the preferred debts and (b) the ordinary debts, between the date of
bankruptcy and the date of payment of the debt, and,

- any postponed debts.

Anyone instructed by the debtor in an application for bankruptcy at the
instance of the debtor, with concurrence of a creditor or creditors, has no
right to preference for their expenses. Their account against a debtor
would rank at best as an ordinary claim against the estate.

2.3.4 The trustee will, as soon as possible after their appointment and for the
purpose of recovering the debtor's estate under Section 3(1)(a) and subject
to Section 40 of the Act, take possession and control of the debtor's whole
estate that vests in the trustee under Sections 31 and 32 of the Act and
take control of the debtor's assets and financial affairs.

However, a trustee cannot register title to a debtor’s heritable property in
Scotland that vests with the trustee, until at least 28 days after the award of
bankruptcy is itself registered. This is to enable a third party who
purchased a property in good faith from the debtor to complete title by
registration.

The 28 day period begins from the day on which:

- the Keeper of the register of inhibitions has recorded the certified
copy of the order of the sheriff granting warrant to cite; or

- a copy of the determination of The Accountant, awarding
bankruptcy has been recorded in the register of inhibitions.

in accordance with Sections 31(1A) and (1B) of the Act.

2.3.5 The trustee is entitled to access to any documents relating to a debtor’s
assets or business or financial affairs, and the trustee can request delivery
to him of any title deed or other document of the debtor (Section 38 (2) and
(3) of the Act refers).

The trustee must make up and maintain an inventory and valuation of the
estate and this shall be recorded in the sederunt book. A copy of the
inventory and valuation must be sent to The Accountant in accordance with
Section 38(c) of the Act.
A style of inventory and valuation is shown at Appendix C to these Notes.

2.3.6 The trustee shall, not later than four days before the date they have fixed for the statutory meeting or, 60 days after award of bankruptcy if no statutory meeting is to be held, send to The Accountant, in accordance with Section 20(2) of the Act:

- the statement of assets and liabilities (except where The Accountant has already received the statement by virtue of submission of the statement to The Accountant with the debtor's application for bankruptcy);

- a copy of the statement of the debtor's affairs (unless the inventory and valuation detailed at Section 2.3.5 of these Notes has already been sent); and

- the trustee's comments, with their opinion as to the causes and reasons for the debtor's bankruptcy and the extent the debtor may have contributed to their bankruptcy. These comments are privileged, in accordance with Section 20(3) of the Act.

2.4 Trustee to ascertain the reasons for insolvency, etc.

The trustee is required to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it under Section 3(1)(c) of the Act.

In order to properly carry out these functions, it is recommended that the debtor be interviewed, in person, by the trustee and that such an interview takes place after receipt of the debtor's own statement of assets and liabilities.

The interview may take place at the debtor's home, place of business, the trustee's office, or over the telephone, as deemed most appropriate by the trustee. If the debtor fails to attend an interview the trustee can consider the actions detailed at Sections 2.5 and 6.3 of these Notes.

2.4.1 The trustee must consider if the debtor's behaviour prior to, and immediately after, award of bankruptcy, is of concern to consider a BRO submission to The Accountant (Section 3(3A) of the Act refers).

2.5 Failure to co-operate with the trustee

If a debtor fails, at any time up until the discharge of the trustee, to provide a complete and accurate statement of all their assets, income and liabilities, or fails to attend an interview or provide any information or
documents as requested by the trustee, the debtor must be notified of their legal obligation to do so and the consequences of failing to comply.

2.5.1 Where the debtor fails to co-operate and the trustee is considering action against the debtor, the trustee should first instruct Sheriff Officers to personally serve on the debtor a formal demand for submission of the required information and/or documents and statement, prior to taking any direct action against the debtor. Personal service of papers ensures the debtor has no defence that they are unaware of both their legal obligation to co-operate and that they will be committing an offence, may be made subject to a BRO and their discharge from bankruptcy may be delayed, if they fail to comply.

If the debtor continues to refuse to co-operate the trustee should consider applying to a sheriff to issue an order for the debtor to co-operate, in accordance with Section 64 of the Act.

If the debtor then fails to comply with the sheriff’s order, they can be prosecuted and if found guilty can be fined or imprisoned by the court.

2.5.2 The trustee can apply to a sheriff for an order requiring an uncooperative debtor to attend a private or public examination in front of a sheriff, in accordance with Sections 44, 45, 46, 47 and 64 of the Act.

The debtor (or other relevant person) can be questioned about their assets and liabilities and ordered to provide information and documents. If the debtor (or other relevant person) fails to comply with the order or any instruction from the sheriff, they will be committing an offence.

If the debtor (or other relevant person) fails to attend a private or public examination, the trustee can make a verbal Motion to the court for a Warrant to Apprehend the debtor (or other relevant person).

Where a Warrant to Apprehend is granted, it is the responsibility of the trustee to instruct a Sheriff Officer or Bailiff (in England and Wales) to execute the Warrant and bring the debtor to court. As this is a civil application, the police are not involved.

A trustee must consider the potential benefits to the administration of the bankruptcy of a private or public examination. It is recommended that a private or public examination is only considered when all other methods of obtaining information have failed, due to the cost and resource implications of arranging and conducting these hearings.

The examination of a debtor (or other relevant person) at a private or public examination can be conducted by the trustee, a solicitor, The Accountant, or by any person appointed to act on their behalf. The Accountant must place a notice of any examination in the RoI.
2.5.3 If the trustee believes the debtor, or any other person examined, has committed a criminal offence, the trustee should report this to The Accountant using a standard suspected offence report (SOR). A copy of the SOR report form is at Appendix J to these Notes. The Accountant will consider all SORs against Crown Office and police guidelines on reporting offences to the Crown Office.

A report made under Section 2.5.3 of these Notes shall be absolutely privileged and details not disclosed (Section 3(4) of the Act refers).

The Accountant may decide not to submit the offence report to the Crown Office if The Accountant considers the report does not meet Crown Office requirements. The Accountant will inform the trustee whether the offence is reported to the Crown Office or not (with reasons).

2.5.4 The Accountant believes it is reasonable to consider a debtor has failed to co-operate if the debtor has been made aware of their obligations and they have failed to provide information or documents which have been requested at least three times by the trustee, with at least one such request having been made to the debtor by recorded or registered delivery, or by personal service.

The trustee must inform the debtor, in writing, that they believe the debtor has failed to co-operate, and if they continue not to co-operate they are committing an offence and may be made subject to a BRO, and/or reported to the Lord Advocate.

If a debtor does not co-operate before they are discharged from their bankruptcy, the trustee should inform the debtor that their discharge can be delayed until The Accountant is satisfied that the debtor has co-operated and provided the trustee with all the required information and documents.

2.5.5 Failure to co-operate with the trustee is grounds for the trustee to submit a report to The Accountant for investigation and consideration for appropriate BRO action (Appendix K). The Accountant may make an order of at least 2 years. However, where The Accountant believes the debtor’s actions warrant a BRO of 5 years or more, The Accountant shall make an application to the sheriff under section 56B(2)(n) of the Act (Section 6.3 refers).

2.6 Statutory meeting of creditors

This meeting is held for the purpose of confirming or replacing the appointed trustee and to elect commissioners. The trustee must give notice to every creditor known to him whether or not they intend to call a statutory meeting. They must give this notice not later than 60 days after the date on which bankruptcy was awarded (Section 21A (2) of the Act refers). The trustee must send with this notice a copy of their statement of the debtor’s affairs.
In terms of Section 21A (2) of the Act, this time may be extended by the sheriff if cause is shown. The bankrupt estate will not bear the cost of the application to the sheriff unless the trustee can demonstrate circumstances out with their control. The statutory meeting may be held at such time and place as the trustee determines.

2.6.1 If the trustee is notifying that they do not intend to hold a meeting, they must inform creditors that, within seven days, any creditor may request that the trustee calls the statutory meeting.

Such a request can only be made by a creditor(s) with not less than one quarter in value of the debtor’s creditors. If made, the trustee must call the statutory meeting not later than 28 days after issue of the original notice. This period can be extended as may be allowed by a sheriff under Section 21A(2) of the Act.

The creditors may continue the statutory meeting to a date not later than seven days after the end of the 28 period, or longer, if they make a successful application to a sheriff and an extension is allowed under Section 21A(8) of the Act.

The trustee must, not less than seven days before the meeting, notify every creditor known to him of the date, time and place of the meeting. They must simultaneously invite their claims against the estate if these have not already been submitted to him.

If the trustee does not call a statutory meeting and the required period of notice has expired, the trustee must make a report to The Accountant on the circumstances of the debtor’s bankruptcy using Appendix P of these Notes.

2.7 Proceedings at statutory meeting, before trustee vote.

The initial proceedings are as follows:

- the trustee takes the chair at the start of the meeting;
- arranges for a record of the proceedings to be kept;
- for voting purposes at the meeting, accepts or rejects, in whole or in part, the claim of each creditor under Section 23(1) of the Act.

2.7.1 The usual requirement for acceptance of the entitlement of a creditor to vote will be production of a statement of claim in the prescribed form Form 5 and prima facie evidence of the debt; e.g. account or other voucher of debt in terms of Section 22(2) of the Act.
It is permissible for a creditor to appoint a representative to act on their behalf at any meeting of creditors. A mandate form must be received.

Where the creditor is not a living individual then the mandate form must be signed by a person with appropriate authority in order to be accepted as valid.

In accordance with Section 23(1) of the Act, the trustee will then invite the election by the creditors of one of their number as chairman. If no chairman is elected by the creditors the trustee remains in the chair throughout the meeting.

2.7.2 The trustee must make both the debtor’s statement of assets and liabilities and their own statement of the debtor’s affairs available for inspection under Section 23(3)(a) of the Act. This gives the creditors the opportunity to draw attention to any errors, discrepancies, etc. and links in with the requirement at Section 23(3)(b) of the Act, that the trustee shall answer as best they can any questions and consider any representations put to him by the creditors.

The trustee shall, having considered any representation made by creditors, determine whether the debtor’s assets are likely or unlikely to be sufficient to pay any dividend to creditors and determine whether it is necessary to revise any of the statements.

If the trustee decides to review the statement they must do so either at, or as soon as possible after, the statutory meeting and provide a copy of the revised statement to every known creditor (Section 23(3) and (5) of the Act refers).

2.8 Trustee vote

After answering questions and considering representations the trustee should invite creditors to proceed to a vote at which they shall:

1. confirm the appointment of the trustee (original trustee), or

2. elect another person as the trustee (replacement trustee).

No person detailed in Section 24(2) of the Act may be eligible for election as ‘replacement’ trustee.

No person detailed in Section 24(3) of the Act is entitled to vote in the trustee vote.

2.8.1 If no creditor entitled to vote attended the meeting, or no replacement trustee is elected, the original trustee shall notify The Accountant and report the proceedings of the meeting to the sheriff in terms of Section 24(4) (b) of the Act, using Form 11, as prescribed in the Rules (Rule 16).
The original trustee shall continue to act as the trustee. The following productions must be submitted to the court with Form 11.

- a copy of the minutes of the meeting of creditors.
- a copy of the trustee’s statement of the debtor’s affairs.

2.9 Resignation of, or requirement to replace, a trustee – Section 28 of the Act – one sequestration case.

If a trustee is unable to act in a sequestration, they may apply to The Accountant to resign as trustee. An application to resign is to be made using Form 21 to Schedule 1 of The Bankruptcy (Scotland) Regulations 2014.

2.9.1 The Accountant will grant an application to resign if satisfied that the conditions of Section 28(1)(a) or (b) of the Act have been met.

The Accountant will make it a condition of resignation that the resigning trustee must call a meeting of creditors for the purpose of holding an election to elect a replacement trustee. The meeting is to be held no more than 28 days after The Accountant has granted permission to resign. These conditions are in accordance with Sections 28(1A) and 28(2)(b) of the Act.

2.9.2 The trustee should notify all known creditors to invite them to attend the meeting of creditors. The trustee should, at this time, inform creditors if there is expected to be any change to the administration of the bankruptcy as a result of their resignation and the appointment of a replacement trustee.

This should highlight the potential for changes to the fee rates and outlays to be charged by the proposed replacement trustee and of the name and address of any person seeking to be elected as the replacement trustee.

A copy of the notification to creditors must be sent to The Accountant, along with a list of the creditors who have been circularised.

The Accountant considers it is very important that creditors are made fully aware of any impact that a change of trustee may have on the administration of the bankruptcy, so creditors can make an informed decision on whether to attend the meeting of creditors and vote to appoint a replacement trustee.

2.9.3 If the required meeting of creditors is not held, or is not held within the stated time period, the trustee will not have met the conditions for approval to resign and The Accountant will not authorise their resignation.
2.10 **Appointment of a replacement trustee**

If a meeting of creditors has been held for the purpose of electing a replacement trustee and no replacement trustee has been elected, The Accountant will consider representation from any eligible person seeking their appointment as the replacement trustee, in accordance with Section 28(5)(b) of the Act.

2.10.1 The Accountant’s request template should be completed within the period of 14 days beginning with the day of the meeting of creditors by the person seeking to be nominated (Appendix B3).

The Accountant will consider any representation for a replacement trustee provided The Accountant has a copy of the minutes of the meeting.

2.10.2 The Accountant will consider any representation for a replacement trustee if:

- all creditors have been appropriately notified, in accordance with Section 2.9.2 above, and The Accountant has received a copy of the circular to creditors has been calling the meeting and a copy of the minutes of the meeting of creditors called to elect a replacement, regardless of whether any creditors attended this meeting. The Accountant is content for the person seeking to be appointed as replacement trustee,

- the person named on the nomination is eligible to be appointed as the replacement trustee and consents to the appointment, and;

- the nomination application is made to The Accountant within the period of 14 days beginning with the day of the meeting of creditors.

2.10.3 The Accountant may appoint the person as the trustee in the bankruptcy in accordance with Section 28(5) of the Act, and record the details of the change of trustee in the Rol.

2.11 **Election and appointment of a replacement trustee**

If a meeting of creditors has been held for the purpose of electing a replacement trustee, on election of the replacement trustee, the original trustee shall immediately make a report of the proceedings at the statutory meeting to The Accountant in accordance with Section 25(2)(a) of the Act, using the format prescribed at Appendix G to these Notes.

The following productions are to be submitted to The Accountant with the report:

- a copy of the letter of notice to creditors of the statutory meeting
• a copy of the list of creditors on whom notice was served
• a copy of the certificate of posting of notice to creditors, and
• a copy of the minutes of the statutory meeting.

2.11.1 The debtor, a creditor, the original trustee, the replacement trustee or The Accountant may, before the expiry of the period of four days beginning with the day of the statutory meeting, object to any matter connected with the election:

(a) in the case of an objection by a person other than The Accountant by applying to The Accountant by virtue of Section 25(3)(a) of the Act, specifying the grounds on which the objection is taken, using Form 1, or

(b) in the case of an objection by The Accountant, by making a summary application to the sheriff, by virtue of Section 25(3)(b) of the Act, specifying the grounds on which the objection is taken. It should be noted that these situations are rare but may occur where a nominated person is not qualified to act or where The Accountant becomes aware of a conflict of interest.

The Accountant recommends that the debtor and creditors are notified immediately after the election of a replacement trustee, in order to give them the opportunity to appeal if they object to the election of the replacement trustee.

If there are no timeous objections The Accountant must without delay declare the elected person to be the trustee in the bankruptcy. If there is a timeous objection made under section 25(3)(a), The Accountant must give the original trustee, the replacement trustee, the objector and any other interested person an opportunity to make written submissions on the application, and make a decision. No expense in objecting under this section is to fall on the debtor’s estate.

If The Accountant decides-

(a) to reject the objection in the application, The Accountant must without delay declare the elected person to be the trustee in the bankruptcy,

(b) to sustain the objection in the application, The Accountant must order the original trustee to arrange a new meeting at which a new trustee vote must be held. Sections 23 to 25B apply in relation to such a meeting.

In accordance with section 25A(5) the original trustee, the replacement trustee, the objector and any other interested person may apply to The Accountant’s independent review team for a review of a decision under Section 25A(2)(b). The application for review must be made before the end of the period of 14 days beginning with the day the notification of the
decision was given. The Accountant’s independent review team has 21 days from the date the application is made to consider any representations made by interested persons and confirm, amend or revoke the decision before the expiry of 28 days beginning with the date the application was made. The trustee, the objector and any other interested party may appeal to the Sheriff against any decision of The Accountant under Section 25A(8) before the end of 14 days beginning with the date of the decision. No expense in objecting under this section is to fall on the debtor’s estate.

If there is a timeous objection made under section 25(3)(b), the sheriff shall without delay give the parties an opportunity to be heard on the application, and make a decision. No expense in objecting under this section is to fall on the debtor’s estate.

If the sheriff decides –

(a) to reject an objection to the appointment of an elected person, the Sheriff must without delay declare the elected person to be the trustee in the bankruptcy.

(b) to sustain the objection to the appointment of an elected person, the sheriff must order the original trustee to arrange a new meeting at which a new trustee vote must be held. Sections 23 to 25B apply in relation to such a meeting.

The sheriff’s declaration or decision on this matter will be final.

2.11.2 Within 14 days of the statutory meeting of creditors, the chairman of the creditors’ meeting must supply The Accountant with a signed copy of the minutes of that meeting, under Schedule 6, paragraph 16 of the Act.

2.11.3 The replacement trustee on being confirmed in office shall retain a record as appropriate to record the bankruptcy process prior to their appointment.

2.11.4 The Accountant must ensure the public RoI is updated.

2.11.5 Within three months of their replacement as trustee, the original trustee must submit their accounts and any claim for outlays to The Accountant and copy to the replacement trustee.

2.11.6 The Accountant shall audit and fix determination and outlays of the original trustee, notify the original trustee and copy to replacement trustee, for inclusion in sederunt book.

2.12 Resignation of, or the requirement to replace, a trustee acting in two or more sequestrations – Section 28A of the Act

If the circumstances of the trustee are as specified under Section 28A(2) of the Act, the trustee may apply to The Accountant to be replaced as trustee.
in more than one case. An application to be replaced is to be made using Form 1 to the Schedule of The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014.

The Accountant in Bankruptcy may also appoint a replacement trustee if the circumstances of the trustee are as specified under Section 28A(1) of the Act.

The Accountant may only appoint a person who is qualified to act and who has consented to the appointment. However, The Accountant may determine that no person is to be appointed, and in this situation, The Accountant in Bankruptcy will be deemed to be the trustee.

It is the expectation that The Accountant will first try and appoint a qualified Insolvency Practitioner (IP) to be the replacement trustee, but if there is no appropriate IP wishing to take up the appointment, the Accountant in Bankruptcy will be deemed to be the trustee.

If a trustee either wishes to, or must, be replaced, or The Accountant proposes to replace a trustee, all interested parties are to be notified at the time of the application/proposal and the recipients informed that they may make representation to The Accountant regarding the application/proposal.

Prior to making a decision on an application/proposal, The Accountant will consider any representation received about the replacement of the trustee.

Once The Accountant has appointed the replacement trustee, or appointed themselves as replacement, The Accountant will notify the appointment to:

- the former trustee, or their representative;
- the replacement trustee (if not the Accountant in Bankruptcy)
- the debtors;
- every sheriff who awarded one or more of the sequestrations.

The appointed replacement trustee must notify all the creditors and request from the former trustee, all their documents and accounts.

The following persons have the right to ask for a review of The Accountant’s decision regarding the replacement of a trustee under Section 28A of the Act, and may also appeal the review decision to a sheriff:

- the debtor;
- the former trustee, and
- a creditor.
2.13 Termination of original trustee’s functions

This action applies if a replacement trustee has been elected by virtue of a trustee vote.

2.13.1 The original trustee, on the appointment of the replacement trustee, must hand over to them everything in their possession which relates to the bankruptcy. This includes the statement of assets and liabilities, and a copy of the statement prepared in accordance with Section 23(3)(d) of the Act, and written comments under Section 20(2)(c) of the Act. The original trustee must then cease to act in the bankruptcy.

2.13.2 Within three months of appointment of the replacement trustee, the original trustee must submit to The Accountant, under Section 26(2) of the Act:

- their accounts of intromissions (if any) with the debtor’s estate to the date of the meeting; and

- a claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by him; and send a copy of the above to the replacement trustee.

If the original trustee was originally interim trustee, they should also submit to The Accountant their accounts and claims for their period as interim trustee.

2.13.3 The Accountant will audit the accounts and claims and make a determination fixing outlays and remuneration. The Accountant shall send a copy of the determination to the original trustee and to the replacement trustee who shall insert the determination into the debtor’s sederunt book.

Under Section 26(4) of the Act, the original trustee, the replacement trustee, the debtor or a creditor can, within 14 days of the issue of the determination, appeal to the sheriff against the determination of the original trustee’s accounts made under Section 26(3)(a)(ii) of the Act. The decision of the sheriff on such an appeal is final.

2.14 Termination of original trustee’s functions where the original trustee was The Accountant in Bankruptcy (under Section 26A of the Act).

Where the original trustee was The Accountant in Bankruptcy and a replacement trustee has been appointed under Section 25 of the Act, The Accountant in Bankruptcy must hand over to the replacement trustee everything in their possession relating to the bankruptcy, including the statement of assets and liabilities. The Accountant in Bankruptcy will then cease to act as trustee.
2.14.1 The Accountant in Bankruptcy will send a notice in writing to the debtor and all known creditors, stating:

- that the Accountant in Bankruptcy has commenced action to discharge their self as acting as trustee;
- that the accounts and intromissions (if any) with the debtor’s estate are available for inspection;
- that an application for a review of discharge of the Accountant in Bankruptcy may be made under subsection (4A);
- that an appeal may be made to the sheriff under Section 26A(5) of the Act; and,
- if no appeal is lodged, or an appeal is unsuccessful, the Accountant in Bankruptcy shall be discharged from all liability to creditors and the debtor (other than liability arising from fraud).

2.14.2 The Accountant in Bankruptcy shall, not later than three months after their replacement, supply the replacement trustee with:

- the accounts of intromissions (if any) as original trustee with the debtor’s estate;
- a determination of fees and outlays calculated in accordance with regulations made under Section 69A of the Act; and,
- a copy of the notice issued under Section 26A(4)(b) of the Act.

(Section 3.18.2 refers)

2.15 Audit and determination of the former trustee's accounts where the replacement trustee is appointed in accordance with Sections 28(5) and 28A(4) of the Act.

Sections 28(6)(b) and 28A(13)(b)(iii) of the Act states that the new trustee of a bankruptcy “may require” the former trustee to submit their accounts for audit and determination to The Accountant, where there are no Commissioners.

The original trustee should only submit their account for audit if requested to do so by the replacement trustee. If the replacement trustee does not require this the accounting period will not be amended and they will be responsible for the submission of the account for any outstanding period of the original trustee.

In order to ensure that the fees and outlays of the former trustee are determined at the earliest opportunity after the replacement
trustee has been appointed, it is The Accountant’s wish that where the new trustee requires the original trustee to submit their account to the date of the change of trustee, the account is produced and submitted to The Accountant for audit, as soon as reasonably practicable, after the appointment of the replacement trustee.

Where required, the former trustee should endeavour to submit their accounts within two weeks of the request to prepare their accounts.

2.16 Election of commissioners

At the statutory meeting or any subsequent meeting of creditors, any creditor not excluded from voting by virtue of Section 24(3) of the Act may, from among the creditors or their mandatories, elect one or more commissioners (or new or additional commissioners). No more than five commissioners shall hold office in any bankruptcy at any one time.

The role of commissioners is detailed in Part 7 of these Notes.

2.17 Meeting of creditors

The trustee must also call a meeting of creditors at any time if required to do so in accordance with Schedule 6, paragraph 1 of the Act:

- by order of a sheriff;
- by the requisition of one tenth in number or one third in value of the creditors;
- by a commissioner; or
- by The Accountant.

Such a meeting must be held within 28 days of the date of the sheriff order or receipt by the trustee of the requisition or requirement, as appropriate.

In addition to the above, a meeting of creditors may be called at any time by the trustee.

2.17.1 The trustee or commissioner who calls a meeting of creditors must, no less than seven days before the date of the meeting, notify every creditor known to him and The Accountant of the date, time, and place and purpose of the meeting.

Within 14 days of any meeting of creditors, the trustee must send to The Accountant a copy of the minutes of such meeting.

If the trustee fails to call a meeting of creditors when properly required to do so, The Accountant may call the meeting. The general requirements regarding the conduct of meetings of creditors are set out in Schedule 6 to the Act.
If a vote is necessary, the matter is to be decided by a simple majority in value of the creditors or mandatories present. It is therefore necessary for the chairman to adjudicate on claims strictly for that purpose. In this context it should be noted that the value of a secured creditor’s claim is the amount owing less the creditor’s estimate of the value of their security. A creditor whose claim is contingent has no voting rights unless they have formally sought to have their claim valued in accordance with Schedule 1, paragraph 3 of the Act.

2.18 Deposit of funds

The trustee must deposit all funds received by him in an interest bearing account in the name of the bankruptcy and in an appropriate bank or institution, as defined by Section 73 of the Act.

Trustees should ensure they comply with their Recognised Professional Body’s money regulations.

2.18.1 A trustee is empowered to retain in their hands only such sums as may be prescribed under Section 43 of the Act, currently £200.

If such funds are placed on the trustee’s firm’s general client bankruptcy account and this account is interest bearing, the problem then arises of the apportionment of the interest earned.

Given that various sums will be lodged and withdrawn at different times for different cases, it would be extremely difficult and time-consuming to split any interest earned.

The monies do not however belong to the firm, therefore the only practical solution is for any interest received in such circumstances to be periodically consigned in the name of The Accountant as an unapplied balance, in accordance with Section 57(1)(a) of the Act.

The amount which may be retained by a trustee may be amended by regulations made by the Scottish Ministers.

2.18.2 Failure in these duties will be reported to the court by The Accountant and may result in removal from office, censure, or such other order as the court sees fit to make.

Bankruptcy funds must be lodged in an interest bearing account.

In accordance with the decision in Freyd’s Trustee (1864, 2M 1293), trustees must not withdraw funds from the bank for the purpose of paying a dividend or dividends, until such time as that dividend or dividends can actually be paid.
Similarly, funds in bank earmarked for specific purposes may not be withdrawn from the bank until payment under the purpose is actually to be made.

Funds withdrawn but not paid out will be regarded as cash in the hands of the trustee for the purpose of determining whether there has been contravention of the duty to not retain a sum in excess of the prescribed amount.

2.18.3 The trustee will be liable to make an income tax return in respect of interest earned by funds held in interest bearing bankruptcy bank accounts.

2.19 **Claims by the creditors and adjudication**

For the purpose of receiving a dividend a creditor must submit a claim before the expiry of 120 days from the date on which they received written notice from the trustee inviting a claim.

If a claim is submitted after the 120 days the trustee may adjudicate on the claim only if they deem there were exceptional circumstances which prevented the claim from being submitted within the statutory time period. If the creditor has not provided a reason for not being able to submit their claim within the 120 period, the trustee should contact the creditor to obtain the reason, before they decide if the claim can be considered.

Where the trustee does not consider the circumstances justify the claim being considered they should provide the creditor with the reasons, in writing. There is no right of review or appeal, against this decision, however, the creditor may make an application to the sheriff under section 50(7) of the Act, to request a direction be made to the trustee to adjudicate on their claim.

If the trustee decides the circumstances for not submitting the claim within the required 120 days were exceptional, they must adjudicate on the claim. The trustee should not make any reference in their adjudication decision notes and letters, to the fact the claim was received outside the 120 day period. This is not relevant to the adjudication decision, which should be based only on the evidence provided in support of the claim.

2.19.1 The form which the statement of claim should take is prescribed *(Form 5).*

The grounds of debt, that is, documentary evidence of the debt such as a detailed account or other voucher, must accompany the statement of claim under Section 22(2) of the Act.

The trustee is required to keep a record of the date claims are produced and lodged by him in accordance with Section 48(7) of the Act.

By no later than four weeks before the end of an accounting period in respect of which accounting period it is proposed to pay a dividend, the
The trustee must have completed their adjudication of the claims in accordance with Section 49(2) of the Act.

Evidence of a debt can be in accepted in any form, such as an invoice, bank statements, court decree, or screen prints from computer records, etc. The trustee has discretion on the evidence they will accept.

The trustee must be satisfied that the debt was incurred prior to the date of bankruptcy and any interest has only been calculated to this date.

When a Local Authority makes a claim in a sequestration for unpaid Council tax, the trustee should confirm the period for which the unpaid Council tax is due.

A full year’s Council tax is payable from the start date of the Council tax year. Therefore, a Local Authority may submit a claim for a full year’s Council tax amount, regardless if the debtor was made bankrupt before the end of the Council tax year.

Post-bankruptcy, a debtor may pay their Council tax liability for a period included in the Local Authority’s claim. If this is the case, the Local Authority should revise their claim down accordingly, prior to the trustee’s adjudication and distribution. Trustees should be aware that a reduction may be required to a Local Authority’s claim, prior to adjudication.

If a Local Authority has submitted a claim for a whole Council tax year, this should remove the requirement for the debtor to pay Council tax for that year. However, some Local Authorities do expect the debtor to continue to pay their Council tax, regardless if a payment period is included in their claim. The trustee should establish if this is the case. If Council tax does not have to be paid by the debtor at any time during their bankruptcy, the trustee should review the debtor’s DCO calculation, as non-payment of Council tax may increase the debtor’s surplus income from which a larger DCO contribution can be paid.

If a creditor presents a court decree as evidence of a debt, the trustee has a responsibility to check that all funds recorded in the decree were due prior to the date of bankruptcy.

If the decree has been granted without the sheriff making any enquiry into the merits of the claim, the trustee may examine the amount recorded in the decree, to be satisfied that it was a valid claim. The trustee may consider rejecting all, or part of, a claim supported by a decree, if they do not agree that the amount declared can be allowed under the adjudication process. The trustee shall record their adjudications as directed in Section 49 (5) of the Act.

Where a claim is rejected, in whole or in part, the trustee shall notify the creditor forthwith, giving their reasons for the rejection in accordance with Section 49(4) of the Act and informing them of their right of review.
Trustees shall intimate rejections by no later than four weeks from the end of the accounting period. Debtors and creditors are given 14 days from the date the notification was sent in which to lodge an application for review with The Accountant’s independent review team.

2.19.2 The debtor or any creditor may apply to The Accountant’s independent review team for a review of the acceptance or rejection of any claim, or a decision in respect of any matter requiring to be specified under Section 49(5)(a) or (b) of the Act. A debtor may request a review in accordance with Section 49(6) only if the debtor has, or is likely to have, a pecuniary interest in the outcome of a review. A review must be received by The Accountant’s independent review team no later than 14 days from the date the adjudication decision was made. The independent review team must take into account any representations made by interested persons, before the expiry of 21 days from the date of the application, and must confirm, amend or revoke the decision before the expiry of 28 days from when the application was made. The debtor may appeal to the sheriff against any decision before the end of 14 days from the date of the decision. A debtor may only appeal where they can satisfy the sheriff that they have a pecuniary interest in the outcome.

2.19.3 Where a preferred ranking is claimed and the adjudication is for ordinary ranking only, that decision also falls to be intimated since it represents a rejection in part of the claim, see Section 49(7) of the Act.

2.19.4 Preferred and ordinary creditors are entitled to claim interest on their claims from the date of bankruptcy to the date of settlement at the contractual rate if so provided, otherwise at the rate of 15% per annum where the date of bankruptcy is before 1 April 1993 and at the rate of 8% per annum in cases where the date of bankruptcy is on or after 1 April 1993, i.e. only one rate of interest will apply to any single bankruptcy. Statutory interest may apply even when there is a contractual right to interest on the debt.

2.19.5 If the trustee is notified of the account details of any bank account into which a creditor wishes payment of a dividend by BACS, the trustee should retain this information if a dividend is expected to be paid to the creditor at a later date.

2.20 Payment of dividends to creditors

Where there are funds available for division amongst the creditors, after providing for contingencies, a scheme of division should be submitted to the commissioners or to The Accountant, as appropriate, along with the account of intromissions etc. under Section 53(1) of the Act.

2.20.1 In arriving at the fund for division, the trustee should note when providing for contingencies, to allow for The Accountant’s fees for:

- supervising proceedings in the bankruptcy,
• audit of the account under review,

• audit of the final account in which the estate is distributed,

A form of scheme of division is shown as Appendix E to these Notes.

2.20.2 The trustee must pay the creditors the dividends allotted to them in their scheme of division either on the expiry of the period of appeal in accordance with Section 53(6) if no objection is taken to the trustee’s remuneration, or, if there are appeals, on the final determination of the last such appeal, in accordance with Section 53(7) of the Act. If an appeal is made to the sheriff then the sheriff’s decision is final.

The trustee should invite all creditors to notify their preferred method for payment and to confirm or provide bank details, to encourage payment by secure BACS transfer. Trustees should consider requesting these details at the same time as requesting claims from creditors.

The trustee should circularise each creditor giving notice of any dividend payment due to be made to them and specifying the amount due. If details of a creditor’s bank account are already known, payment should be made to these details.

2.20.3 The trustee must make reasonable efforts to pay a dividend to a creditor if they are satisfied that the creditor does still exist. The trustee should not consign funds if they have not made reasonable effort to contact and pay a creditor.

2.20.4 Any unclaimed dividend will fall to be consigned with The Accountant, under Section 53(8) of the Act. To do so, trustees may apply to the head office of either the Bank of Scotland or the Clydesdale Bank in Edinburgh for a consignment receipt which they should then lodge with The Accountant.

A style of consignation receipt is shown at Appendix F to these Notes.

Alternatively, the trustee can simply remit the sum to be consigned directly to The Accountant to be lodged in a Royal Bank of Scotland special deposit account.

It is a key function of a trustee to pay out dividends that are due. If a trustee is aware that a creditor is still at the address declared on their Form 5 claim form, the trustee should make reasonable efforts to contact the creditor and pay the dividend due, before deciding to consign funds.

A trustee should not consign funds solely on the grounds that a creditor has not returned details of their bank account to enable a BACS payment.

2.20.5 A certified list of the dividends being consigned should be sent with a cheque made payable to ‘The Accountant in Bankruptcy’. In either case, a fee will be payable to The Accountant for each consignment lodged. This fee will be deducted from the consigned dividend unless
otherwise notified.

2.21 Unapplied balances

When funds are received by a trustee after they have made their final distribution and accounting, and if the amount of such funds is insufficient to justify making a further distribution, the trustee may consign such unapplied balances in accordance with the terms of Section 53(8) of the Act.

Residual balances of less than £52 should not however, be consigned but may be retained by the trustees to defray the expenses of closing the bankruptcy.

A fee is payable to The Accountant in respect of each consignation lodged. This fee will be deducted from the consigned balance unless otherwise notified.

2.22 Discharge of the debtor

The debtor may receive discharge from their bankruptcy on the expiry of one year from the date of the award of bankruptcy, as detailed in Section 54(2) of the Act. Before The Accountant can decide whether or not to grant discharge to a debtor, the trustee must provide a report to The Accountant in accordance with Sections 54(4) and 75(4) of the Act using the prescribed form Appendix N. This report must be completed without delay, 10 months after the date of the award of bankruptcy.

The Accountant does not expect a trustee to recommend the discharge of a debtor if the debtor has not been cooperating. If it is the recommendation of the trustee that a debtor who has not cooperated should be discharged, the trustee must provide both; an explanation why they consider it is appropriate to grant discharge, and details of the action they have taken to try and get the debtor to co-operate.

The Accountant will not discharge the debtor if a Debtor Contribution Order (DCO) has not been made at the time of making the report (See Section ) unless the trustee can confirm they have sufficient funds in hand to pay all creditors in full, including statutory interest.

The report must include all of the following information:

- information on the debtor’s assets, liabilities, financial affairs, business affairs, and the debtor’s conduct in relation to these assets, information on the debtor’s conduct in the course of the bankruptcy and any other information about the bankruptcy the trustee deems appropriate.
• a statement by the trustee advising whether the debtor has at the date of the report –

≥ complied with any DCO

≥ co-operated with the trustee in terms of section 64

≥ complied with the statement of undertakings

≥ made a full and fair surrender of the debtor’s estate

≥ made a full disclosure of all claims which the debtor is entitled to make against other persons, and

≥ delivered to the trustee every document under the debtor’s control relating to the debtor’s estate, business or financial affairs, and

≥ a statement by the trustee, that as of the date of the report the trustee has completed their functions under section 3 of the Act.

The report must be submitted “without delay” to The Accountant after the end of the 10 month period (Section 54(4)(a) of the Act refers). The Accountant expects trustees to have submitted their report within three weeks of the end of the 10 month period. If the report is submitted after this period, the trustee should include in their report an explanation why the report could not be submitted within the requested three week period.

The trustee must, at the same time as sending the report to The Accountant, send a copy to the debtor and all creditors informing them that they have 28 days, beginning with the day on which the notice is given, to make representations to The Accountant.

The decision of The Accountant to grant or not grant discharge will not take effect before the end of the period of 21 days beginning with the day The Accountant notifies their decision.

On receipt of this notification the trustee should forthwith notify all creditors of The Accountant’s decision in order to ensure a request for a review of that decision may be made timeously.

When a debtor was not discharged after 12 months from the date of award the trustee will require to submit a subsequent report when they consider it appropriate for the debtor to be discharged. Evidence should be provided to confirm the behaviour of the debtor that resulted in discharge not being granted have been resolved ie:

• evidence provided of co-operation of debtor ie documents etc provided

• evidence that trustee is able to administer the case satisfactorily
• where a DCO had not been made at least 10 months have passed since the first payment date and the debtor is maintaining payments.

2.22.1 Financial education

A trustee must decide whether a debtor should complete a financial education course. If the trustee decides that a financial education course should be completed, the debtor should be notified of this requirement before the end of the six month period from the date of the award of bankruptcy or where the debtor’s whereabouts are unknown, as soon as reasonably practicable once the debtor’s whereabouts have become known.

A debtor must be notified of the requirement to undertake a financial education course if, in the opinion of the trustee, undertaking the financial education course would be appropriate for a debtor and any of the following reasons apply:

• an award of bankruptcy has been made within five years from a previous bankruptcy award;

• a Protected Trust Deed (PTD) has been granted;

• a debt management programme has been granted;

• a debtor is subject to, or under investigation with a view to an application being made for a BRO;

• the trustee considers that the pattern of a debtor’s behavior, whether before or after the award of bankruptcy, is such that the debtor would benefit from a financial education course, or

• a debtor agrees to complete a financial education course.

The trustee should consider any known health issues relating to the debtor (including mental or physical disabilities) which would render the debtor unable to complete the financial education course. In these circumstances the trustee should report the reasons why financial education was not appropriate in the trustee’s report for discharge. Debtors who have undertaken a financial education course within five years of their bankruptcy award are exempt from participating in any further courses.

The trustee must notify the debtor of their decision and clearly state which module(s) of the financial education course they are required to complete. The available modules are:

• Budgeting and Financial Planning;

• Saving;
- Borrowing;
- Insurance;
- Understanding Tax;
- Financial Life Stages (Setting up a new Home);
- Financial Life Stages (Having a Baby);
- Financial Life Stages (Redundancy).

An online form is available from Money Advice Scotland (MAS) for the trustee to complete, confirming which modules the debtor should complete. This can be found at: http://www.moneyadvicescotland.org.uk/content/bankruptcy

The trustee should direct the debtor to Head of Events at MAS to undertake the required modules. The contact email address is: info@moneyadvicescotland.org.uk. MAS will contact the debtor to confirm they have access to the online course. On completion of the required modules a certificate will be produced for each module. It will be the debtor’s responsibility to notify the trustee that they have completed the required modules. However, MAS will be able to provide the trustee with confirmation that the module(s) have been completed on request.

If the debtor does not have access to a computer or is unable to use a PC, MAS can send a team member to assist the debtor with the online course.

If the debtor refuses to undertake or does not complete the financial education course instructed by the trustee, this should be noted as a matter of non-cooperation within the report sent by the trustee to The Accountant to consider whether the debtor’s should obtain their discharge.

If it is the trustee’s recommendation that, despite the debtor not attending the financial education course, the debtor should be discharged from their bankruptcy, the trustee must provide an explanation for this recommendation and consider if the debtor’s behaviour is reasonable grounds for a BRO.

2.22.2 Discharge of Debtor: review and appeal

In accordance with Section 54B of the Act, the trustee or debtor may apply to The Accountant’s independent review team for a review of The Accountant’s decision to refuse to discharge the debtor. Any creditor may similarly apply for a review of a decision to discharge the debtor. The application for review must be made before the end of the period of 14 days beginning with the day The Accountant notified their decision. If application for a review is made by any creditor, the discharge is suspended until the
determination of that review. The Accountant has 21 days from the date the application is made to consider any representations made by interested persons, and the decision by The Accountant to confirm or revoke discharge must be made by the expiry of 28 days from the date the application was made. Any interested person may appeal to the sheriff against any decision of The Accountant before the end of the period of 14 days beginning with the date of the decision.

2.23 Application for deferment of debtor’s discharge

The trustee must apply to The Accountant in order for The Accountant to consider deferment of a debtor’s discharge under section 54(D) of the Act, where a debtor cannot be traced. A deferral application must be made to The Accountant (Form 11) between 8 and 10 months after the award of bankruptcy.

If the trustee is unable to ascertain the whereabouts of the debtor, and therefore cannot carry out their functions, they must notify by sending a deferral notice (Form 10) to the last known address of the debtor in accordance with Section 54D of the Act. The Accountant will issue a certificate of deferral of discharge where satisfied that the requirements mentioned in Section 54D(5) have been met.

2.23.1 Debtor not traced: new trustee

Where a certificate deferring discharge has been issued in accordance with Section 54D(4)(b) the trustee may apply to The Accountant in order to obtain the Accountant’s authority to resign office under section 54E using the prescribed form (Form 12).

The Accountant will grant the resignation of the trustee using the prescribed notice. Where a notice is issued, The Accountant in Bankruptcy is deemed to be the trustee. The former trustee is not entitled to recover outlays and remuneration payable in accordance with section 53 other than by a claim in the final distribution of the debtor’s estate. Section 28(6) to (8) then applies to The Accountant in Bankruptcy as a new trustee.

An application may not be made if subsection (4) of section 54E applies:

- if after the certificate is issued the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee,
- after the date which is 6 months from the date the certificate is awarded.

2.23.2 Debtor not traced: subsequent debtor contact

Where the trustee ascertains the whereabouts of the debtor or the
debtor makes contact with the trustee, the trustee must prepare a report for The Accountant without delay as laid out in Section 54F (3) and (4) of the Act. The Accountant may discharge the debtor no earlier than 12 months from the date the whereabouts of the debtor were ascertained, or from when the debtor made contact with the trustee. The Accountant will consider the report (Appendix N) by the trustee and relevant representations received. Those must be received before the expiry of 28 days from the date the notice was sent to the debtor and creditors under Section 54(6) of the Act. The decision will not take effect until the expiry of 14 days from the date of the decision to discharge.

2.23.3 Subsequent debtor contact: review and appeal

In accordance with section 54G of the Act, the trustee or debtor may apply to The Accountant’s independent review team for a review of a decision under section 54F(2) or (5) to refuse to discharge the debtor. A creditor may apply under this section for a review of The Accountant's decision to discharge the debtor. The application for review (Form 3) must be made before the end of the period of 14 days beginning with the day the notification of the decision was made. While an application for review is under consideration discharge is deferred until a decision is made. The Accountant has 21 days from the date the application is made to consider any representations made by interested persons, and the decision by The Accountant to confirm or revoke discharge must be made by the expiry of 28 days from the date the application was made. The interested persons may appeal to the sheriff against any decision of The Accountant before the end of 14 days beginning with the date of the decision.

If deferment of discharge is granted by a sheriff, the trustee must send a copy of the court Interlocutor to The Accountant, who will record details of the deferment and the new date of discharge in the RoI.

2.23.4 Effect of discharge on debtor’s estate

The discharge of a debtor has no bearing upon estate which vests in the trustee as at the date of bankruptcy, or estate which subsequently vests before the expiry of 4 years from the date of bankruptcy. That is the combined effect of Sections 31 and 32(6) & (10) of the Act. Subject to Section 39A (2) and (3) of the Act, a debtor is usually re-invested in such estate only upon recall or reduction of the award of bankruptcy. (under Schedule 4, paragraph 16(a) of the Act).

A debtor is not re-invested by discharge in any estate which had already vested in the trustee. The effect of discharge is found in Section 55 of the Act and discharge of the debtor has no effect on the trustee’s powers and duties under the Act. Those powers and duties remain until the debtor’s estate has been realised and distributed and the trustee discharged.
2.23.5 Application to the sheriff - non-cooperation of the debtor

In accordance with section 64 of the Act, a trustee may apply to the sheriff if the debtor has not co-operated with the trustee and the trustee is not able to complete their functions as laid out the Act. The sheriff, if satisfied, will make an order requesting the debtor to comply with the trustee. Any debtor who fails to comply with an order of the sheriff will be guilty of an offence and shall be liable on summary conviction to a fine, imprisonment or both. See section 6.3 of these notes for details on BROs.

2.23.6 Suspected Offences Report

The trustee must complete a suspected offences report (Appendix J) in accordance with Section 67 of the Act. Further information can be found in section 6.25 of these Notes.

2.24 Discharge of trustee

As soon as they have completed their administration of the debtor’s estate and the Debtor Contribution Order has been completed or quashed (see section 4.13.7) the trustee may apply to The Accountant for a certificate of discharge under Section 57(1) (c) of the Act, using Appendix D1A.

The granting of a certificate of discharge to a trustee will cover and include, where they were also interim trustee, their acting as such, in accordance with Section 57(5) of the Act.

In any event, regardless of whether they apply for a certificate of discharge, the trustee, on conclusion of their winding up of the debtor’s estate, must send the bankruptcy sederunt book to The Accountant in electronic format, together with a copy of their audited final account covering from the end of the statutory period immediately preceding, to the closing date of the bankruptcy. The trustee must deposit to The Accountant any unclaimed dividends and unapplied balances in accordance with section 57(1)(a) and (b) of the Act.

The trustee shall notify the debtor and all known creditors of their application for discharge and inform them:

- if applicable, the trustee intends to quash the DCO, provide supporting reasons and details of the of the right of review;
- that the sederunt book is available for inspection following a request to be made to The Accountant;
- of the effect of the grant of the discharge of the Trustee;
• that any written representations relating to the application may be made to The Accountant within 14 days after such notification.

The Accountant, after examining the documents received and considering any representations duly made, shall grant or refuse to grant the certificate of discharge and notify the trustee, the debtor and any creditor(s) who made representation.

2.24.1 Discharge of trustee: review and appeal

The trustee, the debtor or any creditor who made representation may, before the expiry of the period of 14 days beginning with the day of the decision, apply to The Accountant’s independent review team for a review of The Accountant’s decision to grant or refuse to grant the trustee’s discharge, using Form 3 - Application for review.

If an application for review is made a certificate of discharge granted has no effect.

The Accountant has 21 days from the date the application is made to consider any representations made by interested persons and confirm, amend or revoke the decision by the expiry of 28 days from the date the application was made.

The trustee, the debtor or any creditor who made representation may appeal to the Sheriff against any decision of The Accountant before the end of the period of 14 days beginning with the date of the decision.

2.25 The Sederunt Book

The trustee shall maintain a sederunt book for the purpose of providing an accurate record of the bankruptcy process, in accordance with Section 3(1)(e) of the Act.

Where the sederunt book is in their possession, the trustee must make it available for inspection at all reasonable hours by any interested person, in accordance with Section 62(1) of the Act.

2.25.1 The trustee has discretion not to insert confidential documents into the sederunt book, e.g. Counsel’s Opinion on a matter relating to a claim by a creditor, under Section 62(4) of the Act.

At various stages in the bankruptcy process, the Act requires the trustee to insert documents and records in the sederunt book. A check list of these documents and records can be found in Appendix D to these Notes.

2.25.2 Upon conclusion of the winding up of the bankruptcy, the trustee must send an electronic version of the sederunt book to The Accountant for
examination. Prior to transmission of the book to The Accountant, trustees are particularly requested to refer to Appendix D and to make sure that no document or record, which should be entered in the book, is missing.

All fees due to The Accountant and audit observations must be paid and replied to beforehand.

The disposal of all assets which have been detailed in the Statement of Affairs, list of Assets and Liabilities, Questionnaire, or anywhere else should be clearly detailed. This includes property which has been repossessed by a secured creditor or it was claimed to be rented. The position regarding any detailed pension or insurances or endowment (including assigned) should be confirmed.

The trustee must declare any asset which they have not realised and state why the asset was not realised.

2.25.3 The Accountant shall make an appropriate entry into the RoI and the sederunt book where a certificate of discharge is granted. The Accountant will make the Sederunt Book available for viewing for six months, and thereafter it will be destroyed.

2.26 Renewal of entry in the Register of Inhibitions and Adjudications

By Section 14(3) of the Act, the effect of the recording in the Register of Inhibitions and Adjudications of the relevant court order sent by the clerk of court, making the debtor’s heritable estate litigious, expires at the end of the period of 3 years beginning with the date of bankruptcy as defined by Section 12(4) of the Act.

A trustee should check as soon as possible to ensure the order has been registered. For debtor application cases this information is held on BASYS within the inhibition Tab. For creditor petitions the trustee require to undertake a search of the above Register.

Where the order has not been registered the trustee should contact the relevant organisation to request the paperwork is sent to Registers of Scotland for registration immediately.

Unless they have been discharged, the trustee may, before the end of the period of 3 years aforementioned and before the expiry of every subsequent period of 3 years thereafter, renew the record in the Register by sending a memorandum in the prescribed form to the Keeper of the Register of Inhibitions and Adjudications.

Trustees should note that the date to be inserted in the memorandum will be the date the bankruptcy was recorded with the Keeper of the Register.
2.26.1 It appears to The Accountant that renewal of the entry in the said Register will be of useful application only in those bankruptcies where there is heritable estate vested in the trustee and remaining under their charge. Otherwise a debtor might have difficulty in disposing of heritable estate they have acquired after their automatic discharge.

2.26.2 You should note that in two cases: Tewnion’s Trustee, Noter 2000 SLT (Sh Ct) Page 37 and Roy’s Trustee, Noter 2000 SLT (Sh Ct) Page 77, the respective sheriffs were unable to grant an order permitting the trustee to renew out with the time period prescribed under section 14(4) of the Act. To protect the estate’s interest in any heritable estate it is essential that the entry is renewed timeously.

PART 3

INTERIM TRUSTEE

3.1 Documents and information to be provided to The Accountant

In addition to a general duty to supply The Accountant with such information as The Accountant considers necessary to enable The Accountant to discharge their functions under the Act, there is a specific duty imposed upon interim trustees to supply The Accountant with certain Statutory Documents. A check-list of these documents is shown at Appendix H.

3.2 Duties of an interim trustee

The interim trustee’s sole function is to safeguard the debtor’s estate pending a decision on the award of bankruptcy. The interim trustee only remains in office during the period between the creditor presenting the petition for bankruptcy and the award or refusal to award bankruptcy.

The interim trustee shall supply The Accountant with such information as The Accountant considers necessary to discharge their duties.

The interim trustee shall, as soon as practicable, notify the debtor of their appointment.

3.2.1 The interim trustee may, in pursuance of the function conferred on him by Sections 2(6a) and 18(2) of the Act, give general or particular directions to
the debtor relating to the management of the debtor's estate. An interim trustee can:

a. require the debtor to deliver to him any money or valuables and documents relating to their business or financial affairs which belong to, or are in the possession of, the debtor or under their control;

b. place in safe custody anything obtained as detailed at a. above;

c. require the debtor to deliver to him any perishable goods which are under their control and may arrange for the sale or disposal of these goods;

d. make an inventory and/or valuation of all property known to belong 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. carry on any business of the debtor or borrow money in so far as is necessary to safeguard the debtor's estate.

3.2.2 All monies received by the interim trustee in the exercise of their functions over the debtor's estate shall be deposited by him in an interest bearing account in the name of the debtor.

3.2.3 The interim trustee may retain a sum not exceeding £200 from the debtor's estate and should ensure they comply with their Recognised Professional Body's money regulations.

3.2.4 A sheriff may, on application by the interim trustee:

1. on cause shown, grant a warrant authorising the interim trustee to enter the debtor's house or their business premises, open locked doors as required and search for and take possession of anything mentioned in Sections 3.2.1 (a) and (c) of these Notes, and/or

2. make any other order that they think is required to safeguard the debtor's estate.

A sheriff, on an application by the debtor on the grounds that a direction is unreasonable, may set aside the original direction and give such directions to the debtor regarding the management of their estate as they consider appropriate. Subject to any interim order of the sheriff, the debtor shall comply with the direction appealed against pending the final determination of the appeal.
Penalties are provided under Section 18(6) of the Act for non-compliance by the debtor with the directions or requirements of the interim trustee as defined by Sections 18(5) (a) and 18(5) (b) of the Act for obstruction by the debtor of the interim trustee in their entry and search of the debtor’s house or business premises.

3.2.5 Any sum which is derived from Social Security Benefits or tax credits cannot vest in the trustee (section 187(1) of the Social Security Administration Act 1992 and the Tax credits Act 2002). Interim trustees must take care to clarify the most likely source of funds if there is any indication that they may be derived from Social Security benefits or tax credits. If a debtor inadvertently pays money to the interim trustee for the benefit of creditors from funds which were derived from Social Security benefits or tax credits, the trustee must return those funds to the debtor.

This applies even if the payment is made voluntarily and in the full knowledge of the rules on the inalienability of Social Security benefits and tax credits.

3.2.6 A debtor's failure to co-operate with the interim trustee is grounds to refer the debtor's case to The Accountant for consideration of imposing a BRO under Section 56B (2)(n) of the Act. (Section 6.3 of these Notes for Guidance refers).

3.2.7 The specific authority allowing an interim trustee to close down a debtor’s business was repealed in the Bankruptcy and Diligence etc (Scotland) Act 2007. If the debtor does not volunteer to cease trading, the interim trustee should take all reasonable steps to ensure that a debtor’s business does not trade either at a loss or with increasing losses, the interim trustee may be personally liable for any losses. The interim trustee may apply to court under section 18(3) of the Bankruptcy (Scotland) Act 1985 (as amended) for authority to close down a business.

See Section 5.4 and 6.19 of these Notes for details on personal liability and rights of relief of interim trustees in respect of fees due to The Accountant.

3.3 Resignation and removal of the interim trustee

An interim trustee is only appointed pending determination of the petition for bankruptcy.

Where The Accountant considers an interim trustee has failed, without reasonable excuse, to perform their duties The Accountant can apply to the sheriff for their removal. If a sheriff agrees to the removal of the interim trustee they can, on application by The Accountant, appoint a new interim trustee.

A sheriff can also remove from office an interim trustee and appoint a replacement if they are satisfied on application by the interim trustee, the
debtor, a creditor, or The Accountant, that the interim trustee is no longer able to act as interim trustee, or has conducted themselves in such a way that they should no longer continue to act.

On application by either the debtor, a creditor or The Accountant, a sheriff will appoint a new interim trustee if the original interim trustee dies.

3.4 Termination of interim trustee’s functions where not appointed as trustee

This section applies where a sheriff either:

1. awards bankruptcy but appoints a trustee other than the interim trustee; or

2. refuses to award bankruptcy.

Where a sheriff awards bankruptcy but appoints another person as trustee, the interim trustee shall hand over to the new trustee everything in their possession which relates to the bankruptcy, and then cease to act in the bankruptcy.

3.4.1 The sheriff may make a determination of who is liable for the fees and outlays of the interim trustee, with determination of the amount to be decided by The Accountant.

3.4.2 Within three months of the sheriff appointing another trustee, the interim trustee shall submit to The Accountant:

- their accounts of their intromissions (if any) with the debtor’s estate; and,

- their claim for outlays and remuneration.

They shall also send a copy of their accounts and the claim to:

- the debtor;

- the petitioner; and,

- if bankruptcy is awarded, to the trustee and all known creditors.

The Accountant will audit the accounts and issue a determination fixing the amount of the outlays and remuneration. A copy of the determination will be sent to the interim trustee who should thereafter circularise all persons who received the accounts from the interim trustee, as detailed above.
All persons receiving a copy of the interim trustee’s accounts and claims may appeal The Accountant’s determination, which fixes the fees and outlays to be paid to the interim trustee, to the sheriff (Section 13A(7) of the Act refers). The decision of the sheriff in an appeal is final.

If The Accountant in Bankruptcy has not been appointed trustee, a copy of the audited accounts and determination must be sent to the appointed trustee.

3.4.3 On receipt of the determination the interim trustee may apply to The Accountant for their discharge and shall send notice of their application to the persons who received the accounts (Section 3.4.2 of these Notes).

The notice shall advise that creditors may make written application to The Accountant within 14 days or discharge may be granted and the terms of discharge that will apply.

On the expiry of the 14 day period The Accountant, after considering any representations duly made, shall grant or refuse to grant the certificate of discharge and notify the persons mentioned in Section 3.4.2 of these Notes accordingly.

The interim trustee or any person mentioned in Section 3.4.2 of these Notes may, within 14 days after the issuing of the determination apply to The Accountant’s independent review team for a review of a determination. The team will, within 21 days of the date the application is made, take into consideration any representations made, and confirm, revoke or amend the determination before the expiry of 28 days from the date the application was made.

The interim trustee or any person mentioned in Section 3.4.2 of these Notes may, within 14 days after the issuing of the review decision, appeal to the sheriff and if, following an appeal, the sheriff determines that a certificate of discharge which has been refused should be granted they shall order The Accountant to grant it.

If, following an appeal the sheriff determines that a certificate of discharge which has been granted should have been refused they shall revoke the certificate. The sheriff clerk shall send a copy of the decree of the sheriff to The Accountant. The decision of the sheriff shall be final.

The grant of a certificate of discharge by The Accountant shall have the effect of discharging the interim trustee from all liability (other than any liability arising from fraud) to the debtor, to the petitioner or to the creditors in respect of any act or omission of the interim trustee in exercising the functions conferred on him by this Act.
PART 4

ADMINISTRATIVE FUNCTIONS OF THE TRUSTEE

4.1 General powers of the trustee

It is the duty of the trustee to ingather the debtor’s estate and to manage and realise that estate for the benefit of the creditors. It is implicit that the trustee should be efficient and economical in the exercise of their functions in order to optimise the return to the unsecured creditors.

4.1.1 There is a statutory obligation under Section 39(1) of the Act, for the trustee to consult with The Accountant regarding their intentions vis-à-vis the management of the bankruptcy and the sequestrated estate; such consultation to take place as soon as possible after their confirmation in office.

The Accountant will regard the duty to consult to have been complied with provided there is submitted along with the trustee’s first account of intromissions, a brief report indicating the trustee’s opinion as to the likely outcome of the bankruptcy process and any intention to exercise or not, as the case may be, any of the general powers available to him, as provided by Section 39(2) of the Act.

The trustee should of course consult with The Accountant at any time they consider it appropriate or prudent to do so.

4.1.2 In terms of the management and realisation of estate the trustee shall comply with any general or specific directions given to him by either:

   a. creditors;
   b. a sheriff, on application by the Commissioners, or,
   c. The Accountant.

Section 39(1) of the Act refers.

4.1.3 The general powers of a trustee are set out in Sections 39 of the Act. The trustee may do any of the following things:

   • carry on or close down any business of the debtor;
   • bring, defend, continue or sist themselves into any legal proceedings relating to the estate of the debtor;
   • borrow money in order to safeguard the debtor’s estate;
- effect and maintain insurance policies in respect of the business and/or property of the debtor;
- sell, by public sale or private bargain, any part of the debtor’s heritable or moveable estate;
- create a security over any part of the estate;
- exercise any right, option or other power which would have been available to the debtor, to make payments or incur liabilities in order to obtain any property which is the subject of such right, option or power.

Where the consent of The Accountant is required, failure to obtain the necessary prior consent may result in remuneration and/or reimbursement of outlays being denied.

The trustee is not required to take any action to realise secured property if it is not in the best interests of the ordinary creditors and would not be financially beneficial to the estate (Section 39(9) of the Act refers).

For further guidance on the sale of heritable property belonging to the debtor, please refer to Section 6.11 of these Notes.

4.1.4 The trustee must also circulate to the debtor and all known creditors, details of the creditors’ claims and the amounts accepted (Section 49(2A) of the Act refers).

4.1.5 The trustee must, on abandoning a heritable property back to a debtor, register a certified copy of the notice of abandonment in the Register of Inhibitions (Section 32 (9B) of the Act refers), using (Form 22).

4.1.6 Subject to the general duty to consult with The Accountant and to have regard to any advice offered, the trustee may do anything if in their opinion it would be beneficial to the administration of the sequestrated estate.

4.2 Adopt any contracts entered into by the debtor

The trustee has an option as to whether or not they adopt a contract entered into by the debtor prior to bankruptcy, unless its terms and nature preclude adoption, e.g. *delectus personae*, i.e. a contract for the personal services of the debtor, or where the contract expressly excludes assignation.

It should be noted however, that the trustee can be vested in rights under a contract, without the need to adopt that contract, even if - as is the case with some pension scheme policies - it excludes assignees. If they decline to adopt, the other party may have a claim for damages in the bankruptcy.
The trustee shall, within 28 days of receipt of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract. The 28 day period may be extended by The Accountant on the application of the trustee.

If the trustee does adopt the contract, they will incur personal liability in relation to it, subject to a right of relief against the estate or unless criterion is whether or not adoption would be beneficial to the administration of the debtor’s estate, in accordance with Section 42(1) of the Act.

In accordance with Section 42(2B) the trustee or any other interested person may request a review of a determination made by The Accountant under Section 63A(1). The Accountant’s independent review team will carry out all reviews.

- an application must be made before the expiry of 14 days beginning with the day of the decision,

- The Accountant must take into consideration any representations made by interested persons before the expiry of 21 days beginning with the day on which the application is made, and

- confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.

Any interested person may appeal any decision of The Accountant before the expiry of 14 days beginning with the day of the decision. The sheriff’s decision on an appeal is final.

4.3 Entry into a contract

A trustee is given power to enter into any contract which they consider would be beneficial for the administration of the debtor’s estate under Section 42(4) of the Act.

4.4 Apply to the court to have an extortionate credit transaction varied or set aside

Provided the transaction was not entered into more than three years before the date of bankruptcy, as defined by Section 12(4) of the Act, the trustee is empowered to apply to the court for an order varying or setting aside the obligations under the agreement where those obligations are extortionate.

Section 61(3) of the Act specifies the circumstances in which transactions may be regarded as extortionate credit transactions.
4.5 Arbitrate and compromise

A trustee is empowered to:

- refer any claim or question arising in the course of the bankruptcy to arbitration and;

- reach a compromise with regard to any claim made in relation to the sequestrated estate.

These powers are exercisable only with the consent of the commissioners or The Accountant as appropriate.

Should consent be withheld, the trustee shall seek the consent of the creditors by obtaining the votes of a majority in value of such creditors at a meeting of creditors called for the purpose. Alternatively, the trustee can apply to the court for consent under Section 65(1) of the Act.

4.6 Require access to documents in the hands of third parties

It should be particularly noted that a trustee has a right of access to all documents relating to the assets or the business or financial affairs of the debtor which are in the hands of a third party and which have been sent to that party by or on behalf of the debtor.

The trustee is also entitled to make copies of any such documents by virtue of Section 38(2) of the Act.

The trustee may obtain assistance from the sheriff to enforce compliance of third parties in accordance with Section 38(3) of the Act. These provisions would appear to afford the trustee the opportunity to obtain sufficient information to enable him to determine whether it is to the advantage of the bankruptcy to recognise a claim for a lien from that third party in order to obtain possession of principal documents.

In many cases, possession of principal documents will prove to be unnecessary and claims by creditors for a preference will fall to be rejected by the trustee.

4.7 Require the debtor and other persons to attend an informal meeting

The trustee is empowered to request the debtor, the debtor’s spouse or any other person who can give information relating to the debtor’s assets or their business or financial affairs to attend before him informally and to furnish him with the information they require, in accordance with Section 44(1) of the Act.
4.8 **Require the private examination of the debtor and other persons**

Where an informal meeting fails to achieve the desired objectives, e.g. the debtor or other person fails to attend or fails to answer relevant questions; the trustee may apply to the sheriff for an order requiring the debtor or person to appear before the sheriff for private examination under Section 44(2) of the Act.

4.8.1 Penalties are provided for non-compliance with the sheriff’s order under Section 44(3) of the Act. The conduct of the examination, although not held in open court, is taken on oath by the debtor or other person and is regulated by Section 47 of the Act. A copy of the record of the private examination must be sent to The Accountant in accordance with Section 47(6) of the Act. The sheriff is given a discretion whether to grant an application for private examination under Section 44(2) of the Act.

4.8.2 Where there is to be a private examination of a third party the debtor is permitted to question that third party as to any matter relating to the debtor’s assets or their business or financial affairs under Section 47(2) of the Act.

Intimation of such a private examination should be given to the debtor by the trustee and a copy of the intimation to the debtor sent to The Accountant, together with a certificate of posting.

4.9 **Require the public examination of the debtor and other persons**

No later than eight weeks before the end of the first accounting period, a trustee may apply to the sheriff for an order for the public examination, before the sheriff, of the debtor, the debtor’s spouse or any other person who can give information relating to the debtor’s assets or their business or financial affairs, under Section 45(1) of the Act.

4.9.1 Where an order for public examination is granted, the trustee must send to The Accountant a notice in such form and containing such particulars as may be prescribed and send a copy of said notice to every known creditor and, in cases where the debtor’s spouse or any other person is to be examined, to the debtor as well. The intimation from the trustee shall inform the recipient of their right to participate in the examination, in accordance with Section 45(3) of the Act.

4.9.2 The Accountant shall enter particulars of the notice sent in the register of insolvencies (RoI).

4.9.3 The conduct of the examination, which is held in open court, is regulated by Section 47 of the Act. A copy of the record of the public examination must be sent to The Accountant in accordance with Section 47(6) of the Act. Again, penalties are provided for non-compliance with the sheriff’s order under Section 45(4) of the Act.
4.9.4 A sheriff must grant a competently presented application for public examination. A copy of the intimation to the creditors, and the debtor if appropriate, should be sent to The Accountant together with a certificate of posting.

4.10 **Apply to the court for reduction of a gratuitous alienation**

Section 34 of the Act provides a statutory basis for the challenge of a gratuitous alienation by the debtor. An alienation may be deemed to be gratuitous if it involves a voluntary transfer by the debtor of any property, or right, to another person for no valuable consideration or for a consideration which was of significantly less value than the transferred asset.

The statutory challenge is available provided the alienation was effective on a date within five years of the date of bankruptcy, or of the date of the granting of a trust deed by the debtor, or of the debtor’s death in the case of a deceased debtor, and if the alienation was to an associate of the debtor, as defined in Section 74 of the Act.

If the alienation was to a person who is not an associate of the debtor, the time limit is two years prior to the date of bankruptcy etc.

The only defences to a statutory challenge of a gratuitous alienation are:

- that immediately, or at any time since the date of the alienation, the debtor was absolutely solvent;
- that the alienation was for adequate consideration;
- that the alienation was a reasonable birthday, Christmas or other conventional gift;
- that the alienation was a reasonable charitable donation made to a person who was not an associate of the debtor.

In a statutory challenge the burden of proof is on the person seeking to uphold the transaction. When the statutory challenge is not available, a challenge of common law remains possible but here the burden of proof rests on the challenger.

4.11 **Apply for reduction of an unfair preference**

Similarly, in terms of Section 36 of the Act, the trustee can raise a statutory action for reduction of an unfair preference provided the relevant transaction took place not more than six months before the date of bankruptcy or the date on which they granted a trust deed, or 12 months before the date of death in the case of a deceased debtor.
An unfair preference is created if the debtor has made a payment to a creditor which was collusive and intended to prejudice the interests of the general body of creditors.

The only defences to a statutory challenge of an unfair preference are:

- that a transaction was in the ordinary course of trade or business
- that payment in cash was for a debt which, when it was paid, had become payable
- that a transaction was one where parties had undertaken reciprocal obligations (whether performance of respective obligations occurred at the same or different times)
- that the granting of a mandate by the debtor authorised the arrestee to pay over arrested funds or part thereof to the arrestor.

4.12 Apply for recall of a capital order for payment of a sum on divorce

Under Section 35 of the Act, the trustee is given the statutory right to apply to the court for any capital award made to the debtor's ex-spouse to be recalled, provided that:

- on the date the order was made the debtor was absolutely insolvent or was rendered so by the making of the order; and
- the date of bankruptcy was within five years after the date of the order or the debtor granted a trust deed which became a protected trust deed, whether or not within the five years.

4.13 Arrange a Debtor Contribution Order (DCO) from the debtor’s income

Section 32(1) of the Act provides that the debtor’s income, other than income arising from the estate which is vested in the trustee, belongs to the debtor. However, Section 32A(1) of the Act provides for The Accountant to make an order fixing a DCO at the same time as making the award of bankruptcy.

Where an award of bankruptcy has been made by petition to court the trustee must submit proposals (Appendix O) for a DCO to The Accountant within six weeks of the award date. The proposals must be submitted regardless of whether a nil contribution has been assessed or if they have been unable to accurately confirm the debtor’s full income and expenditure.

The calculation of the surplus income will be made using the Common Financial Tool (CFT). Further information relating to the use of the CFT and guidance can be found on our website.
A debtor is required to co-operate with their trustee and provide full information and evidence relating to their income and expenditure to allow an accurate CFT calculation to be completed.

The Accountant will expect the trustee to have made reasonable efforts to obtain co-operation and evidence prior to submission of the proposal. They should inform the debtor that a DCO will be made regardless of their co-operation and advise them of the consequences of not co-operating and non-payment of a DCO made by the Accountant.

If the debtor does not co-operate the proposal should be determined using all the information the trustee has obtained about the debtor’s financial circumstances for example from Standard Questionnaire, banks, employer, credit statements and by making reasonable assumptions about the financial circumstances and expenditure of the debtor.

The trustee should inform The Accountant when a proposal has been made without full co-operation. They should provide evidence any income and expenditure, supporting reasons and assumptions used in the calculation, which should be retained on the trustee’s case file.

Where the trustee is unable to submit the proposal within six weeks of the date of bankruptcy they must apply for waiver under section 212 of the Act prior to submission.

The Accountant will be agreeable to grant such a waiver if the trustee can demonstrate they have been unable to obtain sufficient information about the debtor’s income and expenditure to present a reasonable or accurate DCO proposal within the six week period.

The Accountant must make the order (Form 25) and give written notice to the debtor, the trustee and any third party mentioned in the order.

The DCO must not take effect on a date before the expiry of the period of 14 days beginning with the day of notification of the order.

4.13.1 Where The Accountant has made a DCO, the trustee is not required to reassess the debtor’s income and expenditure using the CFT unless the debtor provides acceptable evidence or information to satisfy the trustee that the amounts used to determine the original DCO were inaccurate, there are significant changes to the debtor’s circumstances or it is time for the 6 month review to be completed (see part 4.13.7).

4.13.2 Where there is no available surplus a DCO must be fixed at zero. A DCO contribution cannot be taken if the debtor is in receipt of only: tax credits, Universal Credit or other Social Security benefits, which includes allowances and payments specified in the Social Security (Scotland) Act 2018 and the Scottish Child Payment Regulations.
Appendix A to The CFT Notes for Guidance, published on the AiB website, records the types of income from which a DCO contribution can, and cannot, be taken.

If the debtor has income from which a contribution can be paid, the question of a contribution must be considered.

The Accountant will determine the date of the first payment, or where a zero contribution order is fixed, determine the date which is to be deemed as the date of the first payment. Where the debtor is in receipt of only income from which a contribution cannot be paid, the trustee may be required to provide proof of the income to AiB. In such a case there would be no need to provide evidence of the debtor’s expenditure.

4.13.3 A DCO will normally last for 48 months or the equivalent weekly period from the date of first payment, in accordance with section 32B of the Act. However this can be varied by the trustee or the person making the order to a shorter or longer term. A longer term should be considered where a debtor has failed to make the agreed payments. A shorter term may be considered where the debtor’s contributions during the shorter period and the debtor’s assets are sufficient to make a full dividend to creditors.

4.13.4 In accordance with Section 32C, the debtor, the trustee or any other interested person may apply to The Accountant’s independent review team for a review of a DCO made by The Accountant under section 32A of the Act.

The application for review must be made before the expiry of the period of 14 days beginning with the day on which the DCO is made. While an application for review is under consideration, the DCO will be suspended until a decision is made. The Accountant has 21 days from the date the application is made to consider any representations made by interested persons, and the decision by The Accountant to confirm, amend or revoke the DCO must be made by the expiry of the period of 28 days from the date the application was made.

The trustee or the debtor may appeal to the sheriff before the expiry of the period of 14 days from the date of the decision, should they not be satisfied with the outcome of a review (Section 32C(5) refers).

4.13.5 The requirement to pay a DCO applies irrespective of the debtor’s discharge. Additional effects of a DCO are laid out in Section 32D of the Act.

4.13.6 To enable deductions from a debtor’s earnings and other income, a debtor must instruct the relevant person to make the deductions from their income (Section 32E refers). This could be their employer, any third person who is required to pay earnings or income to the debtor or any person who is required to pay the income to the trustee. Section 32E(4) of the Act states
that the trustee may give the persons mentioned an instruction if the debtor fails to comply with the request, or if the debtor fails to make two payments.

A person given the instruction by a trustee must comply with this. Failure to comply without good reason will result in the person being liable to make the payment to the trustee which cannot be subsequently recovered from the debtor.

4.13.7 Following a change in the debtor’s circumstances, the trustee may vary or quash a DCO as stated in section 32F of the Act:

- (1)(a) on application of the debtor, following a change in circumstances;
- (1)(b) if the trustee considers it to be appropriate, following any change in the debtor’s circumstances;
- (1)(c) if the trustee considers it appropriate when –
  (i) sending a report to AiB under section 54(4)

The trustee must also quash the DCO before the fixed term if the trustee is applying for their discharge. This should only undertaken when the continuation of the DCO will not bring any financial benefit to the estate.

A decision by the trustee under subsection (1)(b) must not take effect before the period of 14 days beginning with the day on which the decision is made. When the decision is made the trustee must notify all interested persons noted in section 32F(5) of the Act. The 14 days allows for any interested person to request a review of the decision to vary or quash a DCO under section 32H(3).

The CFT assessment must be completed using AiB’s Common Financial Tool system (CFT), and the trustee should create an amended DCO form (Appendix Q) and upload a copy to BASYS, together with any supporting information, and notify the Adjudication and Supervision Team. The trustee must send a copy of the variation form to the debtor and any 3rd person required to make payment under the DCO.

4.13.8 The trustee, on the application of a debtor may extend the payment period of a DCO by granting a payment break. A payment break cannot exceed six months and can only be applied for once during the term of the DCO. A debtor may apply for a payment break if there has been a reduction of at least 50% in the debtor’s disposable income (as determined using the CFT) as a result of any of the following circumstances (Section 32G (3) and (4) refers):

- a period of unemployment or change in employment
- a period of leave from employment because of the birth or adoption of a child or the need to care for a dependant
• a period of illness of the debtor

• a divorce or dissolution of civil partnership

• a separation from a person to whom the debtor is married or is the civil partner

• the death of a person who, along with the debtor cared for a dependant of the debtor

If the trustee is satisfied that a payment break would be fair and reasonable then they may grant a payment break for a period that the trustee thinks fit, not exceeding six months. A payment break constitutes a variation to the DCO therefore, the end date of the DCO should be amended in order for all 48 monthly or equivalent payments to be met, unless the debtor’s circumstances change and the DCO is quashed. The trustee must notify the following persons of the decision to grant a payment break:

• the debtor,

• The Accountant, and

• any third person required to make a payment under the DCO.
PART 5

ACCOUNTING FOR TRANSACTIONS AND CLAIMS FOR REMUNERATION (TRUSTEE)

5.1 Trustee’s account and claim for remuneration

The trustee is required to make up accounts of their intromissions in respect of periods of 12 months, with the first such period commencing with the date on which bankruptcy is awarded, in accordance with Section 52(1) and (2) of the Act.

5.1.1 Where the trustee was initially appointed interim trustee and appointed trustee on award of bankruptcy, the first accounting period will commence from the date of their appointment as interim trustee and end one year after the date of award of bankruptcy, in accordance with Section 52(2ZA) of the Act.

5.1.2 The first accounting period may be shortened to less than 12 months but not less than 6 months where the trustee considers that the funds of the debtor’s estate are sufficient to pay a dividend after making allowance for future contingencies.

This requires the agreement between the trustee and the commissioner(s), or if there are no commissioner(s), between the trustee and The Accountant. Such a request must be made on Appendix B2 to these Notes.

5.1.3 Section 53(3) of the Act stipulates The Accountant must issue a determination fixing the fees and outlays payable to the trustee within 6 weeks of the end of the accounting period. Section 53(3) also stipulates that The Accountant may audit the accounts. The Accountant considers it appropriate to audit all accounts of trustees submitted.

In order to issue the determination, The Accountant must consider the outlays and remuneration claimed by the trustee by receiving copies of relevant invoices or supporting evidence.

5.1.4 A form of account and notes on completion is shown at Appendix B to these Notes. This form of account must be strictly adhered to. The Accountant may authorise a different form of account at their sole discretion but unauthorised variations may be rejected and the trustee required to re-submit the account in the approved format.

The first account must commence with the estate exactly as given up in the trustee’s inventory and valuation of the debtor’s estate. Subsequent accounts must commence with the estate as detailed at the close of the previous audited account.
5.1.5 The trustee's accounts of intromissions must be submitted to the commissioners, where elected, for audit and the fixing of their remuneration within two weeks after the end of an accounting period. A copy of the accounts and the trustee's claim for remuneration must be sent simultaneously to The Accountant.

In addition, to enable The Accountant to exercise their supervisory functions, under Section 1A(1)(a) of the Act, a further copy of the accounts signed and audited and with the commissioner's determination appended thereto, along with a copy of the circular intimating the commissioner's determination to the creditors and the debtor, must be sent to The Accountant.

In cases where commissioners are acting, an agreement between the trustee and the commissioners to vary an accounting period must be recorded and a copy of the note of agreement sent to The Accountant.

5.1.6 If there are no commissioners acting, the trustee’s accounts and claim for remuneration must be sent to The Accountant within the same two week time limit.

5.2 Accounting periods

The trustee is required to make up accounts of their intromissions in respect of each accounting period, with the first period in every case being for 12 months commencing with the date of award of bankruptcy, in accordance with Section 52(2)(a) of the Act.

5.2.1 The first accounting period may be shortened to less than 12 months, but not less than 6 months, where the trustee considers that the funds of the debtor's estate are sufficient to pay a dividend after making allowance for future contingencies. This requires the agreement between the trustee and the commissioner(s), or if there are no commissioner(s), between the trustee and The Accountant.

5.2.2 Subsequent accounting periods must also be for periods of 12 months, beginning with the day after the end date of the previous accounting period, however the trustee and the commissioners or, if there are no commissioners, The Accountant, may agree to vary the end date.

5.2.3 Such agreements may be made in respect of one or more accounting periods but shall be of no effect unless the agreement has been made before the day on which the accounting period would otherwise end.

5.2.4 Applications to extend or accelerate an accounting period must be made to the commissioners or The Accountant, as appropriate, before the end of the accounting period to be extended. The Accountant will reject any applications to extend the accounting period if they are not satisfied that the application was submitted prior to the end of the accounting period to be extended.
An account can be accelerated if the trustee is in a position to pay a dividend and is submitting a scheme of division with the account. An account can also be accelerated if it is a final account.

5.2.5 Applications to vary an accounting period must be made in the form shown at Appendix B2 to these Notes.

If The Accountant accedes to the request, they will issue a formal determination, shown at Appendix B4 to these Notes.

5.3 Submission of accounts

A trustee must submit accounts to The Accountant within 2 weeks of the end of the accounting period as per section 53(1) of the Act.

5.3.1 The information submitted must include:

- a copy of the receipts and payments account relevant to the appropriate accounting period
- evidence of income and outlays, for example, bank statements, states for settlement and copy invoices
- a claim for remuneration (if on a time and line basis this should be in a table format as set out in Appendix A of SIP 9 showing a breakdown of the categories of work carried out by grade of staff)
- the trustee must ensure that any previously raised audit observations have been actioned and all changes have been incorporated into the current account.

5.3.2 It would also be helpful to have a named contact with telephone number and/or e-mail or group e-mail address to allow The Accountant’s staff to clarify any matter.

5.3.4 If the trustee becomes aware before the end of the accounting period that they will not be in a position to submit the accounts to The Accountant within two weeks of the end of the accounting period, they may submit an application to extend the accounting period (excludes first accounts) using the appropriate B2 form (Appendix B2 to these Notes).

If the trustee does not submit their accounts before the end of the accounting period, the Accountant will not accept the accounts until the trustee has submitted a Section 63A(1)(b) application to the Accountant, asking for an order waiving their failure to submit the accounts within the prescribed time limit, and the Accountant has granted this order.
The Accountant will require the trustee to submit with a section 63A(1)(b) application, an explanation why the accounts were not submitted in time, and to state when the accounts will be submitted to the Accountant, if they are not submitted along with the Section 63A application.

5.4 Late accounts

Trustees must submit their accounts within the two week period following the end of the accounting period (Section 53(1) of the Act refers).

5.4.1 The Accountant will deem accounts to be submitted late if they are not satisfied they were submitted within two weeks from the end of the accounting period. The Accountant will return and not determine any accounts deemed late.

5.4.2 The Accountant may return, and not determine, any accounts which are not received in the approved format Appendix B or are not accompanied by the required supporting documentation. This may then require the trustee to make a Section 63A(1) application to The Accountant.

5.4.3 If a trustee wishes to submit accounts after the 2 week period and have the account determined by AiB, and for any subsequent appeal period to be extended, they must first obtain the authority of The Accountant to present the accounts, in accordance with Section 63A(1) of the Act.

5.4.4 In order that the account submitted the trustee is required to submit a Form 1 application to The Accountant requesting an extension to the statutory time period for the submission of the accounts, the determination and the appeal period. The trustee must notify all interested persons where an application is made.

5.4.5 The Accountant will not approve any claim for fees or outlays in relation to a Section 63A(1) application, unless The Accountant has specified that such fees and outlays can be paid from the bankruptcy estate.

5.4.6 Where it is not possible for The Accountant to determine the accounts within the statutory period, for reasons which are the Accountant’s responsibility, they may cure a defect in procedure without an application under Section 63A(1).

5.4.7 Where an application is made under Section 63A(1) or a proposal by The Accountant is made under sub-section (2)(b) all interested persons must be informed that they have the right to make representations to The Accountant before the expiry of 14 days from the day on which the notice is given. The Accountant must take into consideration any representations before making a decision.

5.4.8 Where a decision has been made under Section 63(A), any interested person may apply to The Accountant to make, or refuse to make, an order.
under section 63A(1). An application under Section 63B must be made using Form 3—application for review. Such applications must be made before the expiry of 14 days from the date of The Accountant’s decision.

The Accountant must take into consideration any representations made by interested persons before the expiry of 21 days from the date the application for review is made, and confirm, amend or revoke the decision before the expiry of 28 days from the day the application for review is made.

5.4.9 Any interested persons may appeal to the sheriff on a decision made by The Accountant before the expiry of 14 days from the date the decision is made.

5.5 Audit and Determination of Accounts

5.5.1 The minimum requirements to allow The Accountant to determine accounts:

- trustee’s details and contact name
- a claim for remuneration (if on a time and line basis this should be in a table format as set out in Appendix A of SIP 9 showing a breakdown of the categories of work carried out by grade of staff
- receipts and payments, account
- account card
- bank statement(s) or prints from electronic banking covering the accounting period (these will not be required if no income has yet been ingathered to the estate)
- copy invoices / supporting evidence

5.5.2 If the trustee is unable to provide a bank statement or other bank evidence verifying the closing balance this can be submitted with their next account, or if this is a final account, prior to discharge being granted.

5.5.3 Please note that although these are the minimum requirements of The Accountant, trustees should take account of requirements placed on them by SIP 9.

5.5.4 If insufficient information is provided, it may delay the issue of the determination or result in outlays not being determined for that accounting period.

5.5.5 Information not received

If The Accountant does not receive all of the appropriate information as listed above for all account types except “final”, only outlays claimed through an account which are vouched will be determined. The outlay may be
determined in any subsequent account through which the trustee claims the outlay and provides the voucher. If the account is a “final” account, the Accountant’s staff will endeavour to phone or e-mail the trustee’s office to request the required information. If the information is not received within 3 working days, or by a mutually agreed timescale which adheres to statutory constraints, the account may be returned or otherwise not treated as “final”. This could result in a section 63A application by the trustee or a further account requiring to be submitted.

If the audit observations or amendments to previous receipts and payments have not been actioned by the trustee The Accountant’s staff will either phone or e-mail the trustee’s office to make them aware the observations have not been actioned or the changes have not been implemented.

Responses to the audit observations are to be provided or amended receipts and payments to be submitted within 3 working days or by a mutually agreed timescale.

If an amended receipts and payments is not submitted within the agreed timescale, the account will be amended once more and an audit observation raised to advise if the changes are not incorporated in the next receipts and payments, the determination of the trustee’s claim for remuneration will be restricted or determined at nil.

5.5.6 Appropriate evidence for an outlay or expense

For any outlay, a valid invoice should be produced. It is expected that the following information would be included on the invoice:

- the word ‘invoice’
- a unique identification number
- the supplier name, address and contact information
- VAT registration number (if applicable)
- the name and address of the customer being invoiced
- a clear description of what is being charged for
- the date the goods or service were provided (supply date)
- the date of the invoice
- the amount(s) being charged
- VAT amount if applicable
- the total amount owed.
If an invoice cannot be produced, alternative means of providing evidence of the outlay will be acceptable. For example, where the expense is an application to court, a copy of the application and evidence of the outcome (i.e. copy of the court interlocutor) should be provided.

To evidence the payment of a trustee’s bond, a copy of the invoice from the insurance company or a copy of the trustee’s monthly RPB return will suffice. The Accountant is aware that VAT can be charged on this outlay and will take into consideration when determining the amount requested e.g. bond invoice states £10.00, amount claimed £12.00, The Accountant will determine the latter amount.

To evidence outlays for postage, photocopying etc., the trustee should provide a breakdown of any costs. This can be attached to the table providing a breakdown of time costs by activity and staff grade or on a separate document. However, to be determined, the cost must also be shown through the receipts and payments.

To evidence outlays for travel expenses a copy of an expense return or petty cash voucher will be required together with information relating to the date and reason for the travel.

When a property has been sold on the open market or an asset sold at auction a copy of the state for settlement or auctioneer’s invoice must be provided. This will allow The Accountant’s staff to correctly identify those outlays that will not attract an audit fee.

5.6 Other Account Considerations

5.6.1 Pre-Award Costs

A fee cannot be charged for the granting of a Certificate for Sequestration.

If a fee or outlay becomes due prior to the date of the debtor’s bankruptcy, it is not a fee or outlay of the bankruptcy. Such a fee or outlay cannot be claimed through the bankruptcy accounts, as it became due prior to the start of the first accounting period.

Section 51 of The Bankruptcy (Scotland) Act 1985, as amended, refers to the remuneration and outlays of the trustee and, as above, if at the time of the fee or outlay becoming due, no trustee, or interim trustee, had been appointed, it is not a fee or outlay of the trustee.

The Accountant in Bankruptcy will disallow any fee or outlay which was incurred prior to bankruptcy and the appointment of the Insolvency Practitioner as trustee, if it is declared in a bankruptcy account.
5.6.2 Taxation of Legal Invoices

Section 53(2) of the Act requires all accounts, in respect of legal services incurred by the trustee, to be submitted to the auditor of the court for taxation.

Section 53(2A) of the Act makes provision for the trustee to make a request, under certain circumstances, that such accounts do not require to be taxed.

All requests under this section must be made when the relevant bankruptcy account is being submitted for audit and determination along with a declaration from the trustee confirming:

- the trustee is not an associate of the person who has provided the legal services, and
- the trustee finds the legal expenses to be reasonable and the amount of the legal invoice has been agreed by the trustee and the legal agent entitled to payment.

The trustee should include the legal account in their receipts and payments account and provide a detailed breakdown of the work carried out.

The Accountant will either determine the outlay as an outlay of the sequestration or advise it should be submitted for taxation.

If the outlay has to be submitted for taxation, it will be removed from the current accounting period and the trustee will be permitted to re-submit a request for this legal outlay, upon taxation, to be determined within a later accounting period.

Please note, ‘this does not preclude the trustee from making payments on accounts against an undertaking from the payee to repay any amount which proves, on taxation, to have been overpaid.’

5.6.3 Funds from a third party

The Accountant is also aware that some Insolvency Practitioners, or their firms, request that a third party pays, deposits, or guarantees an amount towards payment of the trustee’s fees and outlays, particularly in the event of a shortfall of asset realisations or debtor contributions being insufficient to cover the expenses of the insolvency, including the trustee’s remuneration.

The Accountant considers it is important that all interested parties are made aware of any agreement that the trustee has made with a third party, which has influenced the decision of the trustee to act.

The Accountant will not determine any fee and outlay of the trustee that is to be met from funds contributed by a third party and these should be highlighted by way of a note in the description box for the outlay.
The Accountant requires trustees to declare in their accounts' circulars, any monies that have been paid to, or deposited with, the trustee or their firm, being payment of the trustee's remuneration and outlays.

The requirement to disclose such payments is specified in Section 8(f) of SIP 7 and is consistent with paragraphs 2 and 5 of SIP 9(Scotland).

If the trustee has received, or is to receive, funds from a third party in respect of a specific instruction, but also seeks approval of remuneration and outlays from the debtor's estate, they must submit to the Accountant with their bankruptcy accounts their SIP 9 detailed time sheets and vouchers and a copy of the terms and conditions and payment details, that the trustee has agreed with the third party.

In the event that The Accountant’s determination of the interim and/or trustee’s entitlement to remuneration and outlays is less than the funds received, any balance must be transmitted to the trustee (where the interim trustee was another insolvency practitioner) who may apply them to satisfy or contribute towards their own entitlement to remuneration and outlays as may be determined by the commissioners or The Accountant, as appropriate. Where the interim trustee and trustee are the same insolvency practitioner any remaining funds should be returned to the source.

5.6.4 Category 2 Disbursements

The Accountant cannot determine Category 2 disbursements until they are shown through an account. However, The Accountant is aware that under SIP 9 a trustee cannot draw these disbursements until they are agreed. If a trustee wishes to have these disbursements agreed by The Accountant, they should show the entries through the account, providing the relevant documents or supporting evidence. These entries should then be shown at the end of the account as ‘Due to trustee’. The Accountant will include these outlays in the determination as an agreement that they may be drawn.

5.6.5 Payments For Services To Associated Companies

Where the trustee is engaging the services of an associated company, The Accountant is of the opinion this should be treated in line with a category 2 disbursement.

The following process should be applied:

- the outlay should be shown through the account for determination but should not be drawn from the sequestration account until such time as the appeal period has passed
- advise of the association by way of a note in the description box for the outlay
• include a paragraph in their account circular detailing the outlay payable and advising it is payable to an associated company

5.6.6 Additional payments on invoices

Before entering into agreements with legal agents and third parties, who are charging an uplift in their fees or taking a percentage of the realisations when assets are finally realised, trustee's must be able to demonstrate that creditors have been notified of their intentions to do so and that they have first been given the opportunity to fund any action.

5.7 Fixing of Remuneration

The trustee is not entitled to take any remuneration from the bankruptcy estate until they have been found entitled to such by a formal determination of the commissioners or The Accountant.

In addition, except when they themselves were the interim trustee, the trustee is not entitled to take any remuneration or reimbursement until the expenses of the interim trustee, as determined by The Accountant, have been paid in full.

5.7.1 In cases where commissioners are elected, the fixing of the trustee’s remuneration and approval of their outlays is a matter for the commissioners, subject to rights of appeal in the first instance to The Accountant and in the second instance to the sheriff.

5.7.2 In cases where the trustee is appointed but there are no commissioners, the duty of fixing the trustee’s remuneration and approving their outlays devolves upon The Accountant. Section 53(4) of the Act, which applies to both commissioners and The Accountant, states that:

“The basis for fixing the amount of the remuneration payable to the trustee may be a commission calculated by reference to the value of the debtor’s estate which has been realised by the trustee, 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 their responsibilities in administering the debtor’s estate.”

5.7.3 Information required by The Accountant to determine a trustee’s remuneration within a 12 monthly period or pro rata?

This must be submitted for all trustee remuneration claims, including those that the trustee wishes to defer.

A trustee is required to comply with SIP 9 in submitting a claim for remuneration. This requires a trustee to provide sufficient supporting information to enable The Accountant, having regard to all the
circumstances of the case, to make an informed judgement as to whether the remuneration sought is reasonable.

SIP 9 also requires a trustee to state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed. If there have been any changes to charge out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. A trustee should also provide details and the cost of any work that has been sub-contracted out and that could otherwise be carried out by the trustee or their staff.

Claims less than £10,000 - The Accountant will require a breakdown of the claim for remuneration by activity and grade of staff. The Accountant will also carry out a random check of claims under this amount or consider whether more detailed information is required taking into account the trustee’s cumulative remuneration. On these occasions, the request for detailed time records (format shown at Appendix B5) will be made by telephone or e-mail on receipt of the account to request this documentation be submitted within 3 working days or by a mutually agreed timescale which adheres to statutory constraints. If, after this agreed timescale the documentation is not received, the remuneration will be determined, however, this information must be submitted with the next account and The Accountant reserves the right to amend any future claims for remuneration in accordance with section 53(5). The Accountant will not be able to audit any future scheme of division or final accounts until this check has taken place, which may delay the distribution to creditors or discharge of trustee.

Claims between £10,000 and £14,999.99 – The Accountant requires a breakdown of the claim for remuneration and detailed time records (format shown at Appendix B5). These should be submitted with the account. If they are not received, The Accountant’s staff will either phone or e-mail the trustee’s office to request this documentation be submitted within 3 working days or a mutually agreed timescale which adheres to statutory constraints. If, after this agreed timescale the documentation is still not received, the remuneration will be determined at a level which The Accountant considers appropriate. Future claims for remuneration may take into account any adjustment which is considered appropriate in accordance with section 53(5).

Claims of £15,000 and over – The Accountant requires a breakdown of the claim for remuneration, detailed time records (format shown at Appendix B5) and the trustee’s case files. These should be submitted with the account. If they are not received, The Accountant’s staff will either phone or e-mail the trustee’s office to request this documentation be submitted within 3 working days or a mutually agreed timescale which adheres to statutory constraints. If, after this agreed timescale the documentation is still not received, the remuneration will be determined at a level which The Accountant considers appropriate. Future claims for remuneration may take
into account any adjustment which is considered appropriate in accordance with section 53(5).

When case files are submitted, the trustee should still attach copies of the relevant invoices etc. to the receipts and payments.

The Accountant will endeavor to return the case files to the trustee within 14 days of receipt.

5.7.4 Information required on the detailed time records and how will The Accountant reach a decision

The information required is as follows:

- date a task was carried out
- length of time taken to carry out said task
- member of staff who completed the task including grade; and
- a description of the actual work carried out for each entry. This should be proportionate to the time charged.

The Accountant will assess that the work was necessary to the administration of the bankruptcy, that it was carried out by the correct grade of staff, that the time taken to complete the task was reasonable.

Where the category of work does not sufficiently explain the task undertaken or where the time recorded does not appear to be consistent with the task, The Accountant will restrict or disallow time entries that do not contain a sufficient narrative describing the work carried out. The accountant will also disallow or restrict any entries where the work is not considered relevant to the administration. The Accountant may reduce the rate charged for work if it is considered that the task was not undertaken by an appropriate grade of staff. The Accountant may reduce the time claimed for a task if it is considered to be excessive.

5.7.5 If the trustee disagrees with The Accountant’s determination of the remuneration the trustee has the option available under section 53(6) for the trustee to appeal the determination.

Alternatively, the trustee may submit a request following the issue of the determination, or with the next account, for The Accountant to reconsider the amount determined and to make an adjustment in a future determination in accordance with section 53(5). The trustee must provide any missing information, an explanation as to why an entry should be allowed or any further documents or supporting evidence which will assist The Accountant to reach a decision. Should The Accountant then allow any further remuneration to be claimed, a revised determination will be issued or an amendment will be made to a future claim for remuneration in
accordance with section 53(5). Should The Accountant not allow any further remuneration to be claimed, the trustee may make an appeal to the sheriff within the appeal period of the relevant determination.

5.7.6 Once The Accountant has issued a determination fixing the trustee’s fees and approving their outlays, the trustee becomes immediately liable for all statutory fees relevant to that determination or accrued to the date thereof, e.g. the audit fee and any other fees, including the supervision fee, not already paid.

5.8 **Deferral of remuneration**

If the trustee wishes to have their accounts determined, but requests that their remuneration and their liability for the audit fee in respect of this period are not fixed until a later accounting period, they should lodge a claim for remuneration with the account. The trustee must also submit a formal request, in the form of an Appendix B1A to these Notes.

5.8.1 If a trustee wishes to request that their remuneration for a period is fixed at ‘nil’, a claim for remuneration must also be submitted with the account to show the amount of remuneration that may have been claimed. This is to allow for circumstances where the trustee may, at a later date, request that this account period be adjusted.

5.8.2 The determination issued will show the trustee’s remuneration has been fixed at ‘nil’ with a statement advising that: ‘The Accountant may at a later accounting period adjust the amount of remuneration fixed in respect of this accounting period, in accordance with Section 53(5), or 53A(3), of the Act.’

5.8.3 When the trustee wishes their remuneration for a previous period to be fixed, or any previous period re-fixed, they should submit a formal request with the next account. The request should be made in the form of an Appendix B1(B) to these Notes.

5.8.4 Appendix B1(B) should confirm the current account period, the account period that has to be fixed/re-fixed and whether the remuneration is to be fixed as per the full claim for remuneration previously submitted, or a lesser amount.

5.8.5 The determination issued will show the trustee’s remuneration as the total of the amount fixed for the current period, together with the amount fixed for the previous period(s).

5.8.6 The appeal rights for the fixing of the remuneration, for all periods included in the determination, will now be within the timescales relevant to the current accounting period.

5.8.7 Where the sum found due to the trustee includes such an adjustment, it will be the responsibility of the trustee to fully disclose this information to the
debtor and creditors in the circular intimating the amount of remuneration fixed.

5.8.8 Please note that the Accountant also reserves the right to adjust the remuneration for a current period where, after investigation, it believes an amount of remuneration fixed for a previous period has been proved to be inappropriate.

5.9 **Adjustment of remuneration determined in a previous account period.**

Section 53(5) of the Act makes provision for the commissioners, or if there are no commissioners, the Accountant, to adjust the amount of remuneration fixed in a previous accounting period and include this adjustment in the current accounting period.

5.9.1 If a trustee presents their accounts for audit to the Accountant and wishes for their remuneration and their liability for the audit fee in respect of the accounting period not to be fixed until a later accounting period, they may lodge with the account a SIP9 and a formal request, using form Appendix B1A, to these Notes.

5.9.2 If a trustee requests that the Accountant fix their remuneration for a period at 'nil', a claim must be submitted with the account to show the amount of remuneration that may have been claimed. This is to allow for circumstances where the trustee may, at a later date, request that this account period be adjusted.

The Accountant’s determination will show the trustee’s remuneration has been fixed at 'nil' with a statement advising that the Accountant may, at a later accounting period, adjust the amount of remuneration fixed in respect of this accounting period, in accordance with Section 53(5), or 53A(3), of the Act.

5.9.3 When a trustee wishes the Accountant to fix, or re-fix, their remuneration for a previous period, they must submit, with their next account, a formal request using form Appendix B1(B) to these Notes.

The Appendix B1(B) must confirm the current account period, the previous account period that is to be fixed/re-fixed and whether the remuneration is to be fixed as per the SIP9 previously submitted, or attach a revised claim giving reasons for any amendments.

5.9.4 The determination the Accountant will issue will record the trustee’s remuneration as the total of the amount fixed for the current period together with the amount fixed for the previous period(s).

The appeal period for the fixing of the remuneration, for all periods included in the determination, will now be within the timescales relevant to the current accounting period.
5.9.5 Where the remuneration sum found due to the trustee includes such an adjustment, it is the responsibility of the trustee to fully disclose this information to the debtor and creditors in the circular intimating the amount of remuneration fixed.

5.9.6 The Accountant may adjust the remuneration for a current period if, after investigation, they believe an amount of remuneration fixed for a previous period was inappropriate.

5.10 Fees due to The Accountant

In terms of the Bankruptcy Fees (Scotland) Regulations 2014, The Accountant is obliged to charge a fee for issuing a determination of the trustee’s entitlement to remuneration and the reimbursement of outlays; the fee is presently set at 17.5% of the total sum determined.

The sum determined is defined in Section 53(3) (a) (ii) of the Act as ‘….the amount of the outlays and the remuneration payable to the trustee;…”

5.10.1 Outlays for this purpose are intended to include all sums actually paid out by the trustee from their own or bankruptcy funds.

The following outlays and expenses would not be included in the audit fee calculation -

- bank charges
- trading expenses
- tax on interest
- income tax
- inheritance tax
- capital gains tax
- remuneration settled by third party e.g. property sold on behalf of a secured creditor
- The Accountant’s audit fees
- any other statutory fees
- petitioning creditor expenses
- funeral expenses
expenses of realisation which have been deducted at source

5.10.2 An expense of realisation is defined as ‘any outlay incurred by the trustee in realising the debtor’s estate, which in the course of normal business practice is deducted from the price payable to him.’

Thus, for example, outlays in connection with the sale of heritage, that is, advertising, conveyance, etc. would be off-set against the proceeds of sale.

The cost of legal advice or action to secure authority to sell the heritage would not however be treated as an expense of sale, but as a direct outlay.

This will also include other assets that are realised and the auctioneers/agents fees are deducted directly from the price payable to the trustee.

5.10.3 Trading expenses are defined as ‘any outlays incurred by the trustee in the carrying on of any business by the debtor’. Thus, if a trustee (with authority) continues to trade the debtor’s business, only the net profit or loss needs to be recorded in the trustee’s account and claim for remuneration and outlays.

5.10.4 When submitting statutory accounts, Appendix B to these Notes, trustees must make it clear in the Notes to the Account when outlays are being set-off against receipts, enclosing the appropriate paperwork to verify this when necessary, e.g. states for settlement, auctioneers’ invoices.

See also Section 6.20 to these Notes for advice on personal liability and rights of relief of interim trustees and trustees in respect of statutory fees due to The Accountant.

5.11 Sale of heritable assets on behalf of secured lenders

5.11.1 Where a heritable asset is sold by the trustee on behalf of the secured lender, and there are other assets to be realised for the benefit of the estate generally, the trustee should account for the income and expenditure relating to the secured asset sales in a separate Receipts and Payments account, in the same way they would with a trading account.

The following guidance should be noted:

1. The gross proceeds of sale must be shown through the account.

2. Any expenses incurred in selling the property, or outlays agreed to be paid by the secured lender, are to be shown through the account, as they become due.

3. The amount paid to the secured lender is to be shown through the account and an up-to-date redemption statement provided if the sale is completed
six months or more after the Appendix L action was approved by the Accountant in Bankruptcy.

4. The Trustee's fee, agreed by the secured lender for selling the property, is to be shown through the account.

5. If the agreement specifies all fees and outlays are to be paid by the trustee and reimbursed from the secured lender, but not from their security, the money paid to the trustee is to be shown through the Receipts, in order to balance the account.

6. Any net amount arising from the sale, which is due to the sequestration, should be shown through the main Receipts and Payments account. If this situation arises, the fee agreed by the secured lender may not be taken from the sequestration funds. If the trustee wishes to take remuneration in respect of the sale from the sequestration funds, they must first have the amount determined by the Accountant in Bankruptcy.

An example of the additional account is provided at Appendix R to these Notes.

If the trustee is also seeking payment of other remuneration and outlays they must submit their detailed SIP9 timesheets and vouchers to support their claim.

5.11.2 It is expected that the sale of any heritable asset under these circumstances will previously have been approved by The Accountant, as per section 6.11 of these Notes.

5.11.3 Where a heritable asset is sold by the trustee on behalf of the secured lender following a formal repossession of the property, the net amount, if any, received should be shown in the account as receipts and the related costs should be given by way of a note in the description box for the outlay.

5.11.4 Details of the agreed amount of fees and outlays paid by the secured lender to the trustee, in the specific accounting period, along with details of the properties sold in the period should be declared in the relevant account circular.

5.12 Scheme of Division and Final Accounts

5.12.1 Prior to paying a dividend to creditors, trustees are required to have the Scheme of Division, Appendix E to these Notes, approved by either the commissioner (if in post) or The Accountant.

This must always be submitted with an account which has an end date that is the same as the date of the Scheme of Division.
5.12.2 A final account, clearly noted as such, should be submitted for all cases. Where the final account follows on from a Scheme of Division account, it should include the relevant dividend payments to creditors.

Copies of the signed receipts in respect of the dividend payments should be submitted with the account. If these are not available, copies of the cheques with the relevant copy bank statements will suffice.

5.13 Intimation of trustee’s remuneration to the debtor and creditors

Within six weeks after the end of an accounting period, or any period so authorised by The Accountant the commissioners or, as the case may be, The Accountant, will:

- audit the trustee’s account of intromissions;
- strike the balance resting owing to or by him, and,
- fix the amount of their remuneration under Section 53(a) (ii) of the Act.

5.13.1 The debtor (subject to 5.13.2) and the creditors, are given rights of appeal against the trustee’s remuneration, as fixed either by the commissioners or The Accountant, in accordance with Section 53(6) of the Act.

The trustee must notify these parties of the details of the relevant determination so that they may appeal, if so advised. The notification must include the following information:

- The precise accounting period as detailed in the determination;
- If the determination includes an adjustment of a previous account period determination - The precise account period the adjustment has been made to.
- details of the remuneration fixed, the outlays allowed and the amount of VAT eligible;
- The Accountant’s fees as detailed in the determination;
- information regarding rights of appeal, i.e. to The Accountant or the sheriff as appropriate, and the time limits for lodging such an appeal, and;
- advice that the audited accounts (and scheme of division, if appropriate) and the commissioners’/ The Accountant’s determination are available for inspection by arrangement.
5.13.2 A debtor may only appeal against the trustee’s remuneration if they satisfy The Accountant, or a sheriff, that they are likely to have a financial interest in the outcome of the appeal, in accordance with Section 53(6A) of the Act.

If a successful appeal by a debtor is not expected to release sufficient funds to enable a reversion of funds to the debtor, then the debtor is not expected to be permitted to lodge an appeal.

5.13.3 A copy of the commissioners’/ The Accountant’s determination may also be attached to the circular notifying creditors and the debtor of the above.

A copy of the notification to the debtor and the creditors, together with a certificate of posting, must be sent to The Accountant by the trustee. The trustee may wish to refrain from taking their remuneration until the expiry of the appeal period to avoid the necessity of repaying the estate should there be a successful appeal.

5.14 Replacement trustee

Where the trustee was appointed as replacement trustee, submission of accounts must be in accordance with Section 25, 28 and 28A of the Act, the commissioners or, AiB must issue a determination fixing the amount of the outlays and remuneration payable to the former trustee or the former trustees representatives in accordance with section 53.

5.14.1 Election of a replacement trustee under Section 25 and the process for submitting accounts under Section 26

- any current accounting period should be amended between the original and replacement trustee from the date of the meeting of creditors at which the replacement trustee was elected.
- the original trustee shall submit their accounts for audit within 3 months of the interlocutor appointing the replacement trustee.
- the replacement trustee will submit their accounts from the date of the meeting to the current end date.

5.14.2 Appointment of a replacement trustee under Section 28 or 28A

- the original trustee should only submit their account for audit if requested to do so by the replacement trustee and the accounting period will be amended to end on the date the replacement trustee is appointed.
- if the replacement trustee does not require the above the accounting period will not be amended and they will be responsible for the submission of the account for any outstanding period of the original trustee.
5.14.3 Fees and outlays payable on appointment of a replacement trustee

Section 53(4)(a) requires The Accountant to take account of the work reasonably undertaken by the trustee in fixing the remuneration payable, having regard to the value of the debtor’s estate which has been realised by the trustee.

5.14.4 Accordingly, it is The Accountant’s position that, where the replacement trustee has been appointed for a bankruptcy, as a condition of a commercial arrangement between Insolvency Practitioners (or their firms), any fees and outlays incurred as a cost of the replacement trustee process, will not automatically be approved by The Accountant to be paid from the bankruptcy estate.

These fees and outlays must not be recorded in the bankruptcy accounts, unless their payment has been approved in advance by The Accountant, or by a sheriff.

If the original or replacement trustee wishes The Accountant to approve these fees and costs, then representation must be made, prior to preparing the accounts, explaining why the trustee believes that payment from the debtor’s estate is appropriate.

5.14.5 It is The Accountant’s opinion that it is not appropriate for the fee rates of a replacement trustee to be applied until their appointment has been confirmed by The Accountant or a sheriff, as appropriate.

Responsibility for the administration of the bankruptcy remains with the original trustee until such time as a replacement trustee is appointed.

5.14.6 Where a replacement trustee has been appointed, the accounts prepared must record remuneration using the fee rates charged by the original trustee, up until the date of the appointment of the replacement trustee. The replacement trustee’s fee rates must be charged from the date of their appointment.

5.14.7 If accounts are presented to The Accountant for audit, where the fee rates have not been calculated as per Section 5.14.3, the accounts will be returned to the trustee for amendment, unless the trustee can demonstrate that either, creditors have approved the fee rates charged for the periods recorded in the accounts, or the fee rates and the date of their introduction, have been approved by The Accountant or a sheriff.
ADVICE NOTES ON SPECIFIC ASPECTS

6.1 Abandonment of assets (other than the debtor's family home)

This Note should be read in conjunction with Section 6.11 of these Notes (Section 39A of the Act refers), regarding debtor's family home ceasing to be part of the sequestrated estate. The definition of 'family home' is detailed in Section 40(4)(a) of the Act.

6.1.1 Not infrequently, trustees find themselves vested with assets, other than the debtor’s family home, which are of no immediate or foreseeable realisable value but which might possibly acquire such a value at some point in the future.

It is The Accountant’s opinion that the trustee should take no action which might be construed as a formal abandonment of such assets, unless it is burdensome in nature. There is no need for the trustee to do so and the Act contains no provisions for such abandonment of any asset, other than the debtor’s family home. An exception to this is in relation to a family home where there is little or no equity (see part 6.11).

However, the trustee must consider the long term costs and implications to the debtor and creditors of retaining vested interest in such assets which are unlikely to acquire any value for several years. It is in the interest of all parties to try and obtain an agreed settlement with the debtor, over the asset, which will allow the trustee to abandon their interest.

The trustee shall inform creditors and commissioners (where appointed) of their proposal(s) to deal with such assets, to confirm recommended action is approved.

6.1.2 The Act also contains no provisions for residual vesting after the discharge of the trustee. Assets vest in the trustee by virtue of their appointment. Once discharged, the appointment ceases to have effect and assets therefore, do not continue to vest in a trustee. Nevertheless, given the limited effect of Section 55 of the Act, such assets do not automatically re-vest in the debtor but are in limbo. In practical terms there is nothing to stop the debtor transacting with such assets unless an interested creditor revives the bankruptcy following a petition to court.

6.1.3 It is a debatable point whether the court would in the event uphold a new trustee’s right to recover assets which have been ‘deserted’ by the previous trustee but in The Accountant’s view a trustee should do nothing to effectively prejudice the right of any successor in office in respect of the same estate.

By the same token, any vested right of the debtor, e.g. the fee in a life rent estate, does not re-vest in the debtor by virtue of their discharge whether or
not the trustee has been discharged. If the trustee has been discharged, their rights to such estate transmit to any successor in office and should not therefore be formally abandoned.

It would however be prudent to inform creditors and the debtor, in the final circular, of all identified assets and vested rights which the trustee does not intend to realise and to advise them of their future rights and obligations in respect of such assets and rights.

6.2 Awards of bankruptcy of more than one estate

6.2.1 Partnerships and individual partners - By virtue of Section 6(5) of the Act, it is competent to combine a petition for the bankruptcy of a partnership, by:

I. a temporary administrator;

II. a member State liquidator appointed in main proceedings;

III. a trustee acting under a trust deed; or

IV. a qualified creditor or creditors, if the partnership is apparently insolvent,

with a petition for the bankruptcy of any of the partners as an individual. In such a combined petition, it has previously been the practice of the courts to make a single award of bankruptcy. The Accountant has however, requested that the estates of the partnership and each of the individual partners be treated separately in the bankruptcy process. This is on the basis that each, including the partnership, has a separate legal persona and may therefore have distinct assets and liabilities.

6.2.2 The competency of sequestrating jointly the estate of a partnership and the estates of individual partners was considered by the Court of Session in the case of the Royal Bank of Scotland plc against the Firm of Messrs J & J Messenger and Others (Lord Marnoch, Outer House, 26 June 1990). In view of the decision in this case certain changes in practice will be necessary.

Lord Marnoch held that:

‘... while section 6(5) expressly provides that a petition for the bankruptcy of the estate of a partnership may be combined with a petition for the bankruptcy of the estate of any of the partners as an individual, I find nothing there which suggests that the result of the combined petition should be anything other than separate awards of bankruptcy in respect of the estate of each debtor ...’
He was also of the opinion that:

‘... it is quite inappropriate and indeed incompetent to sequestrate jointly the estate of a partnership with the estates of individual partners.’

Following this decision, sheriffs are making separate awards of bankruptcy in respect of the partnership and each partner, i.e. in respect of each estate sequestrated. The result is that a separate bankruptcy process for each debtor will be necessary and, accordingly, trustees will have to maintain separate documentation and a separate sederunt book for each debtor’s estate.

Despite the decision of Lord Marnoch, it remains possible that single awards of bankruptcy of the estates of the partnership and the partners as individuals will continue to be made. The Accountant is of the view that there should be a consistent approach to the bankruptcy of estates of partnerships and partners and that steps should be taken to conform to the ruling of Lord Marnoch.

Accordingly, if a single award sequestrating a partnership and the individual partners is received in future, The Accountant will register a separate award of bankruptcy for the partnership and each of the partners and thus effectively split the single award into separate awards. In these cases it will also be necessary for the trustee to maintain separate documentation and a sederunt book for each debtor.

In view of Lord Marnoch’s decision, it seems to The Accountant that it would be inconsistent not to treat in the same way all cases in which a single award of bankruptcy had been made in respect of more than one person. Accordingly, any such award (most likely one sequestrating a husband and wife) will be split into single awards in the manner noted in the preceding paragraph and trustees should proceed accordingly.

In any case where a duty to maintain separate records arises, The Accountant will include a reminder in their first standard letter sent to the trustee.

Section 56A of the Act permits The Accountant or a sheriff to make a BRO in respect of a debtor. A BRO can only be made by the sheriff on the application of The Accountant.

Section 3(3A) of the Act requires a trustee to report a debtor to The Accountant if they believe there are reasonable grounds to believe that the
debtor’s behaviour is of a kind defined under Section 56B of the Act, that would result in a sheriff or The Accountant making a BRO. If a trustee is unsure if a debtor’s behaviour could merit a BRO, they should contact the Accountant to discuss the case.

A BRO is a means to impose conditions on a debtor’s activities, immediately from the date the BRO is imposed by The Accountant or the Sheriff. The BRO can be made following a debtor’s unacceptable behaviour either before or during their period of bankruptcy.

If a trustee believes that the debtor’s behaviour falls under Section 56B, an application must be made to The Accountant using the Bankruptcy Restrictions Investigation Application (Investigation Application) at Appendix K to these Notes.

A trustee must provide The Accountant with a report and the supporting evidence for a BRO, and The Accountant must be satisfied that sufficient grounds and evidence has been submitted, prior to accepting the Investigation Application for investigation and a possible BRO application to court.

A report made under Section 6.3 of these Notes shall be absolutely privileged and details not disclosed. An application must only be made during the period a debtor is un-discharged from their bankruptcy, unless a sheriff grants permission for a late BRO application (Section 56D of the Act refers). The Accountant will only consider an application to a sheriff to ask for a late BRO application to be accepted, if there is very good reason to do so.

A BRO shall come into force when it is made; and shall cease to have effect at the end of the date specified in the order, Section 56E (1)(a) and (b).

6.3.1 The public interest test - Prior to acceptance of a BRO submission, the applicant and The Accountant, must be satisfied that it is in the public interest to impose a BRO on a debtor.

When signing the Investigation Application, the trustee will be declaring that they consider it is in the public interest to impose restrictions on the debtor.

The public interest will vary from case to case and the applicant must consider the particular circumstances of each case when applying the public interest test. If one of the following public interest criteria applies, then an Investigation Application should be submitted to The Accountant:

In protecting the ‘public interest’, the BRO must:

Act as a deterrent:

- would the planned action deter a potential wrong-doer from
doing the same thing if the outcome was publicised?

- afford protection to business and consumers from potential future losses or damage?
- reduce the possibility of future losses/damage?

Consideration should also be given to determining:

- at the time of the event, without the benefit of hindsight, why was the behaviour (un)reasonable?
- would BRO action observe the human rights of the debtor and the justice and equity of proceedings?
- are proceedings possible in a timely manner within the framework of the Act?
- do the circumstances of the individual and the seriousness of the facts make action just and equitable?
- would the planned action look reasonable to the average person on the street and/or to business?
- is there likely to be any negative impact of the planned action?
- is there more than 50% likelihood of success?
- effectively apply the public purse?
- does the case overall merit public expenditure?
- does the likelihood of success and the ultimate result justify continued investment?

6.3.2 Period of restrictions for a BRO

Each individual case must be treated on its own merits. Until there has been precedence set through the courts as to what period a sheriff is likely to agree for a particular behaviour, this Guidance has divided the 15 year period into three groups:

The trustee should note what length of time they feel appropriate on any application for a BRO or interim BRO made to The Accountant. The Accountant will then determine the length of time in their decision or will note this on an application to the sheriff. The Accountant may make an application to court for a BRO if they feel that the behaviour of the debtor warrants a BRO of 5 years or more.
Lower bracket (2-5 years):

- cases which are relatively not serious.
- debtors who have “over-reached” – going beyond the point when they should have realised they were likely to become bankrupt;
- debtors who are careless rather than overtly reckless;
- consumer credit cases, unless there is reason for them to move into the middle bracket;
- cases involving small amounts of debt (less than £5,000), even though there has been recklessness by the debtor.

Middle bracket (6 – 10 years):

- cases where there is a cynical exploitation of creditors (may be overt or implied by timing of events and may include actual or potential criminal acts):
  - the debtor does something to put substantial/material assets out of reach of creditors;
  - cases where there is overt recklessness or a blatant disregard for creditors resulting in substantial/material detriment.

Top bracket (11-15 years):

- particularly serious cases:
- cases of very substantial fraud or dishonesty, involving material sums (more than £50k);
- cases where there has been a breach of a previous BRO.

Following a review of the Investigation Application and the subsequent investigation The Accountant will have undertaken, The Accountant will assess the bracket the misbehaviour of the debtor sits in and then consider the severity of the behaviour to determine the period within that bracket that they believe is appropriate and can be justified to both The Accountant and, the sheriff.

6.3.3 BROs and Suspected Offences - It is expected that in cases where a BRO is to be made by The Accountant, or an application for a BRO is to be sent to a sheriff, there can also be a Suspected Offence Report (SOR) submitted to the Crown Office. A SOR relates to a criminal offence, a BRO is a civil matter.
However, the impact of both a SOR and a BRO on the debtor, must be considered when applying the public interest before a BR submission form is completed.

On occasion a decision may be taken by The Accountant to reject a SOR as it does not meet the minimum standards for prosecution, however, a BRO can still be made by The Accountant and a BRO application can still be made to a sheriff in these cases.

6.3.4 **Interim BROs** - The Act provides for interim BROs to be made where there is an urgent need to protect the public. This may happen if there are delays in obtaining information for the investigation.

The Accountant will decide if there is a need to make an Interim BRO, or submit an application for an Interim BRO to a sheriff.

An interim BRO will cease to be effective:

1. on determination of the BRO by The Accountant;
2. on determination of the BRO by the sheriff
3. on discharge by the sheriff on application by The Accountant or the debtor.

6.3.5 **Grounds for making a BRO** (Section 56(B) of the Act refers)

A BRO must be made if The Accountant, or as the case may be, the sheriff thinks a BRO is appropriate having regard to the conduct of the debtor (whether before or after the date of bankruptcy). The following behaviours should be taken into consideration:

a. failure to keep records;

b. failure to produce records to The Accountant, the trustee or interim trustee, or failing to supply accurate information to an authorised person for the purpose of the granting under section 5B of a certificate for sequestration of the debtor’s estate.

c. making a gratuitous alienation;

d. creating an unfair preference;

e. making an excessive pension contribution;

f. failure to supply goods or services which has given rise to a creditor’s claim;

7. trading when they knew they could not pay their debts;
h. incurring a debt before bankruptcy which they knew they could not pay back;

j. failure to satisfactorily account for losses in property to: (i) the sheriff; (ii) The Accountant; (iii) the interim trustee, or (iv) the trustee;

k. excessive gambling or other extravagance which may have materially affected their debts;

l. neglect of business affairs that contributed or increased their debts;

m. fraud or breach of trust, and

n. failure to co-operate with: (i) The Accountant; (ii) the interim trustee; or (iii) the trustee.

The Accountant and sheriff can also take into consideration if the debtor had previously been made bankrupt and whether they remained undischarged from that bankruptcy at any time during the period five years ending with the date of the bankruptcy to which the BRO application relates (Section 56B(3) of the Act refers).

6.3.6 Gathering evidence to support an Investigation Application.

The trustee must consider early into the debtor’s bankruptcy if there are grounds to consider a BRO. If there are, the trustee must proceed to gather evidence of the suspected misbehaviour and submit the Investigation Application, within eight months of the date of the debtor’s sequestration is awarded.

This can be done in various ways:

- interview of the debtor;

- speak to and obtain in writing, statements from creditors and other potential witnesses;

- obtain supporting documents and statements from relevant persons and organisations;

If an Investigation Application is being considered, the trustee must ensure that the debtor has been made aware of their misconduct and the potential consequences of that action, prior to making the BRO submission to The Accountant.

The Accountant in Bankruptcy is unlikely to authorise covert surveillance or use of informants to gather evidence for a BRO, unless there is strong evidence produced by their agent/provider that:

- there is a public interest to do so;
• a criminal offence is suspected;

• all alternative means to gather the information have been exhausted; and;

• the expected outcome of such action will justify the resources required.

The trustee must gather the evidence to support the application and submit the original documents to The Accountant for consideration and onward transmission to the court if applicable.

6.3.7 Bankruptcy Restriction submissions

To provide The Accountant sufficient time to either; make a decision on a BRO application or prepare a case and application to a sheriff for a BRO/Interim BRO, the completed Investigation Application should be sent to The Accountant no later than eight months after the date of sequestration being awarded. However, later submissions will be considered if there are strong grounds i.e. new information becomes available and it is in the public interest to pursue a BRO. The Accountant may still make a BRO; or make an application for a BRO only with the permission of the sheriff, Section 56D (2)(a)and(b).

The Investigation Application, Appendix K to these Notes, must be completed by the trustee or their representative. The Investigation Application must be supported by prima facie evidence of the matters contained within the Application (Section 6.3.6 to these Notes refers).

The restrictions imposed by a BRO are stringent and therefore, the report will need to satisfy The Accountant, that the allegations are both accurate and are supported by evidence.

6.3.8 Notice of intention to apply for a BRO

It is recommended that The Accountant’s publication “Bankruptcy Restrictions Guide”, (BROs)”, is made available to the debtor when a BRO is being considered.

On receipt of the Investigation Application, The Accountant will consider whether to pursue a BRO as soon as possible. The Accountant will write to the debtor informing them of the action and detail the evidence supporting the BRO application. This correspondence will confirm that an Investigation Application for a BRO has been submitted, and provide a copy of the Bankruptcy Restriction Orders guide for further information.

The letter must also advise of the action that will be taken and detail the evidence supporting the Investigation Application. The written notice must inform the debtor that they have the right to make representations to The Accountant where The Accountant is making the decision in relation to the
proposed BRO (Section 56A (3) refers). The debtor has 14 days from the date of the written notice to make any representations to The Accountant.

The Accountant will notify the trustee and the debtor once an Investigation Application has been determined by The Accountant.

6.3.9 Transitional issues

The legislation on BROs (Sections 56A – 56J of the Act), cannot be applied retrospectively because it would be wrong to penalise someone for doing something which, at the time at which they did it, would have attracted no censure or penalty.

6.3.10 Effect of recall on a BRO

If an award of bankruptcy has been recalled, a sheriff may annul any BRO or interim BRO, which is in force, and no further BRO can be applied for (Section 56J of the Act refers). If a sheriff refuses to annul a BRO or interim BRO then the debtor may, no later than 28 days after the date of the recall, appeal to the sheriff principal against a refusal. The sheriff principal’s decision is final.

The Accountant can, where recall was granted under Section 17D(1) and 17E(6), annul a BRO and interim BRO and cannot make any new applications for BROs in respect of the debtor. Where The Accountant refuses to annul a BRO or interim BRO, the debtor may apply to The Accountant’s independent review team for a review of that decision. A review application must be received no later than 14 days from the date of the recall. Any interested persons have 21 days from the date the review was requested to make any representations to the review team.

The Accountant must confirm the refusal or annul the order before the expiry of 28 days from the date the application for review was made. The debtor may appeal to the sheriff against any decision of The Accountant before the end of 14 days from the date of the decision.

6.3.11 Review and appeal of a BRO

A debtor may apply for their BRO to be annulled or varied. Applications must be made to either The Accountant or the sheriff (where the sheriff made the order). Where an application has been made to The Accountant by the debtor, The Accountant must take into account any representations made by interested persons, before the expiry of 21 days from the date of the application. The Accountant must confirm, amend or revoke the decision before the expiry of 28 days from when the application was made. The debtor may appeal to the sheriff against any decision of The Accountant under subsection (5)(b) before the end of 14 days from the date of the decision. The sheriff may make a further order providing that the debtor may not make another application under subsection (3) for such period as may be specified in the order.
6.3.12 BRO restrictions

The Accountant will request that on all occasions when a BRO or Interim BRO is granted, that Section 67 (9) of the Act applies to the debtor for the duration of the BRO/Interim BRO.

The key restrictions that will apply are:

- the debtor must disclose their status to a credit provider if they, either alone or jointly with another person, wish to get credit of more than £2,000;

- the debtor must disclose their status to a credit provider if they wish to get credit of any amount and already have debts of £1,000 or more;

There are further restrictions relating to the debtor being unable to hold certain public office positions and jobs. It is the responsibility of the debtor to ensure they are aware of the full range of restrictions that apply when a BRO is imposed on them.

6.3.13 Accounting for the cost of a BRO

All costs incurred in the investigation leading to the acceptance of an Investigation Application for onward application by The Accountant to the courts, cannot be recovered from a debtor’s estate. This is following a recent change in policy. The decision made means that The Accountant in Bankruptcy will no longer be able to charge costs associated with a BRO to a debtor’s case. All such costs must be met by public purse. In doing so it means that creditors will not be unduly affected by a loss in any dividend. This new procedure is also in-line with the procedures adopted by the UK Insolvency Service, on the basis that the activity is carried out in the public interest.

Section 3(8) of the Act requires that the trustee undertakes their general functions as trustee “in so far as, in their view, it would be of financial benefit to the estate of the debtor and in the interests of the creditors to do so”.

The decision to impose a BRO is dependent on whether the action is in the public interest (See Section 6.3.1 of these Notes).

Once the decision has been taken by The Accountant to make a BRO or to apply to the sheriff for a BRO, the cost of gathering any additional evidence to support the application and the cost of attendance in Court should be accounted for separately and may not be recovered from the case.

In circumstances where there are insufficient funds in a debtor’s estate to meet the cost of an investigation into a potential BRO, or to meet court
costs of a BRO application, The Accountant can agree to meet these costs, if The Accountant decides it is in the public interest to pursue the BRO.

6.4 Caution - Specific Penalty

Insolvency Practitioners are required in terms of Regulation 12(1)(b) of the Insolvency Practitioners Regulations 1990 (as amended), to ensure that there is in force in relation to their bond of caution, a specific penalty in respect of their acting in particular bankruptcy proceedings.

Practitioners should note that where they have obtained a specific penalty as interim trustee and they are subsequently appointed as trustee in that bankruptcy, it is unnecessary for them to obtain a further specific penalty in respect of that subsequent appointment Regulation 13 of the Insolvency Practitioners Regulations 1990 (as amended).

The Accountant is of the view that this regulation applies equally to an appointed trustee who was also interim trustee in that bankruptcy and obtained a specific penalty in that capacity.

The foregoing is without prejudice to the duty of a practitioner to obtain a further specific penalty in a higher sum, in terms of Regulation 12(1)(c) of the Insolvency Practitioners Regulations 1990 (as amended), should the value of the assets under administration justify an increase in the specific sum.

Trustees are also advised that a specific penalty obtained by a trustee acting under a trust deed is not acceptable in a subsequently awarded bankruptcy; they will have to ensure that there is in force a separate specific penalty in relation to their actions in the bankruptcy.

6.5 Child support maintenance

Where there is a Deduction of Earnings Order (DEO) in effect prior to an award of bankruptcy, that order ceases to have effect upon such an award. Unlike other forms of arrestment however, any deductions made after the date of bankruptcy are not repayable to the sequestrated estate, in accordance with Section 37(5A) of the Act.

6.5.1 Once bankruptcy has been awarded, the Child Support Agency (CSA) cannot enforce a pre-bankruptcy DEO, nor take any other steps to recover pre-bankruptcy arrears. The CSA may claim in the bankruptcy but upon their discharge the debtor will be discharged of personal liability for such arrears by virtue of Section 55(2)(d)(ii) of the Act.

That section is confusing but The Accountant is in no doubt that this is the intended and actual effect of the provision. There is of course no discharge from liability for post-bankruptcy obligations.
6.5.2 There is nothing to prevent the CSA from obtaining a DEO in respect of debtors’ post-bankruptcy earnings and any such obligation must be taken into account by The Accountant in considering an application by a trustee for a Debtor Contribution Order (DCO) (Section 4.13 of these Notes).

However, Section 32(3)(c) of the Act provides that the sheriff’s assessment of the debtor’s obligations need not be sufficient to comply with the terms of any existing Child Maintenance order or agreement.

Trustees should bear this in mind when negotiating a DCO and also be aware that the CSA central office may be prepared to discuss the question of modifying the terms of an existing DEO.

6.6 Claims for solatium and patrimonial loss

Where a debtor’s estate includes a right to sue for patrimonial loss, it is open to the trustee to initiate the necessary action or to insert (sist) themselves into the process if an action has been/is commenced by the debtor. Where the claim is for solatium, the trustee cannot initiate the action but can include (sist) themselves into a process initiated by the debtor.

6.6.1 The Accountant’s view has, however, always been that a trustee should not involve themselves in speculative proceedings and should be very reluctant to sist themselves into damages actions commenced by the debtor lest they find themselves personally liable for the costs of the action. It was thought to be unnecessary to do so since, in any event, if the action was successful, the proceeds would vest in the trustee as acquirenda as per Section 32(6) of the Act.

6.6.2 A decision of the Sheriff Principal of Grampian Highlands held that an award of damages to the debtor would not vest in the trustee unless the date of settlement fell on a relevant day, as defined by Section 32(10) of the Act, unless the trustee had sisted themselves to the action. That decision appeared to leave trustees only the uncertain course of seeking a deferment of the debtor’s discharge in order to embrace the date of settlement.

Fortunately, the Sheriff Principal’s decision was overturned on appeal to the Inner House of the Court of Session and the effect of that judgement is that the very raising of an action by the debtor transforms the nature of their claim such that the right to the proceeds of the action automatically vest in the trustee as at the date of tabling of the action. [Coutts Trustee v. Coutts SCLR 1998 p.729].
6.7 Continuation of debtor’s business by trustee

Sections 18(2)(h) of the Act allows the interim trustee to continue the debtor’s business. Section 39(2) of the Act allows a trustee to carry on or close down the debtor’s business.

However, the trustee is required to consult with and comply with general or specific directions from creditors, The Accountant and on direction of a sheriff, following application by any elected commissioners.

6.7.1 There is a statutory duty on the interim trustee to preserve the debtor’s estate pending the appointment of the trustee, in accordance with Section 2(6A) of the Act. The interim trustee must take all reasonable steps to prevent additional loss to the creditors, prior to appointment of the trustee.

6.7.2 The trustee must consider the financial benefits to the estate of the debtor of any actions they may take over the debtor’s business, in accordance with Section 3(8) of the Act.

The trustee must consider that since it will be in all probability the failure of the business concern which has led to the debtor’s bankruptcy, the business will be by definition unprofitable and it is not therefore, in the interests of the creditors to continue trading.

6.7.3 Nevertheless, it is recognised that circumstances may arise where continuing to trade is either unavoidable, because of the nature of the business, or is judged likely to be ultimately beneficial to the sequestrated estate. Another circumstance which might lead to a decision to trade-on, is where the debtor is not insolvent and a petition for recall is deemed likely to succeed. Finally a decision to trade-on might be a matter of necessity, if the business involves a livestock enterprise or a nursing home for example.

There are accordingly three basic options in a trading case:

- to close down the business and realise the assets.

- to ‘trade to a close’, for example, where the stock is perishable or where it is judged that a better realisation will be achieved if the assets are sold in the normal course of business than if they were separately disposed of.

- to trade-on pending a sale of the business as a going concern, or its reversion to the debtor.

6.7.4 If the decision is to trade to a close, or to trade-on to disposal, it will clearly be in the best interest of the trustee that such period of trading is the minimum time possible. In any circumstances, the continuation of an already failed business is a highly speculative venture and should a trustee wish to do so, they must be clear in their own mind that it is on their personal responsibility.
6.7.5 The trustee, in such circumstances, is in a delicate position, because they will incur personal liability in respect of contracts adopted or made by him, though they will have a right of recourse against the estate (but in no circumstances from public funds). The continuation of a business by a trustee is a commercial decision.

However unfortunate it may be for a trustee who makes that decision and subsequently incurs losses for which they are personally liable whether through initial misinformation or whatever, that is a risk they take, even though they do so in furtherance of their statutory and trustee duties and obligations.

6.7.6 Although not legally binding it is nevertheless of interest to note a recent decision of the General Commissioners of Inland Revenue which found a trustee personally responsible for PAYE liabilities incurred during a sustained period of trading on. The trustee’s defence that it was the debtor’s own responsibility was not accepted.

6.7.7 Where an interim trustee decides to take responsibility to carry on the debtor’s business in terms of section 18(2)(h) of the Act, they should be clear that their position is no different from that of a trustee as stated above.

It should be noted that the statutory power given to an interim trustee extends only to the period of the interim trusteeship and if the trustee intends to continue running the business they should consult with and comply with general or specific directions from creditors, The Accountant and on direction of a sheriff following application by any elected commissioners.

6.8 Council Tax

The Trustee is not liable for Council Tax in respect of a heritable asset in a bankruptcy.

If the property is vacant, it may qualify for [unlimited] exemption in terms of The Council Tax (Exempt Dwellings)(Scotland) Order. The exemption applies to the property and not the person.

To satisfy the exemption, the property must:

a) not be the sole or main residence of any person [i.e. be vacant];

b) be vested in a Trustee by virtue of Sections 31 or 32 of the Act; and

  c) the trustee is the only “qualifying person” [i.e. there is no joint / several liability].

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If the property is occupied, it is the occupier, and not the trustee, who assumes responsibility for Council Tax. The individual would require to contact their Local Authority to ascertain whether any discounts would be appropriate in terms of Section 79 of the Local Government Finance Act 1992.

The trustee is not required to apply for exemption, as the trustee is not liable for any Council Tax from the outset.

However, the trustee should notify the Local Authority to advise them of the bankruptcy and the status of the property vesting with the trustee.

This will allow the Local Authority to update their records regarding any Council Tax liability and to commence any investigations they deem necessary.

6.9 Custody, preservation and destruction of papers, books and records

6.9.1 Obtaining possession and rights to retention or return of debtors’ records.

It is important that immediate possession is obtained of any trading records of a debtor who has carried on a business, and of any other papers and documents relating to the debtor’s financial affairs.

As property of the debtor, their books and records vest absolutely in the trustee and the debtor accordingly has no right to their return, except in the following circumstances:

- the bankruptcy is recalled;
- there is a reversion to the debtor after all the debts have been paid, with interest; and
- any right to pursue the recovery of debts owing to the debtor or any other right of action has been abandoned to the debtor and the trustee holds records or documents relative thereto.

When there is any such reversionary right, the interim trustee or trustee, as the case may be, must take every reasonable step to return to the debtor all papers, books and records which the trustee has taken possession of.

6.9.2 Interim trustees and trustees entitled to records

If an interim trustee requires possession of records to carry out their functions, they are, in terms of Sections 18(2)(a) & (b) of the Act, entitled to have them. If there is any difficulty, the interim trustee should apply to the sheriff, in terms of Section 18(3) of the Act, for an order in appropriate terms or for a warrant to search and take possession.
The powers available to a trustee are less specific but Section 38(4) of the Act requires the debtor or any other person to hand over any title deed, or other document. Section 67(3) of the Act makes it an offence to destroy, damage, conceal or remove any document.

6.9.3 Records not to be annotated

Business books and records used in the business of a debtor should not be ruled off after the last entry in them, or otherwise annotated either by the interim trustee, trustee or their staff; or by the debtor or their accountants preparing statements of affairs etc.

6.9.4 Inventory of accounting records

It is important to make an inventory of business records and to have such records identified by the debtor. This will avoid any possible evidential difficulty in cases which go for prosecution on an alleged offence, e.g. of failure to keep proper accounting records. A separate statement must be taken from those asked to carry out the identification of the records. The separate statement will identify the records handed over to the trustee and will additionally list all the records maintained, including any which have not been handed over.

6.9.5 Records subject to a lien

Records which the interim trustee or trustee is entitled to take possession of may be subject to a lien. Section 38(4) allows the trustee to require delivery of documents despite a right of lien being claimed but without prejudice to any preference of the person claiming the lien.

When a person claiming a lien refuses to deliver up relevant documents, the trustee may apply to the court at any time to require the delivery or surrender of any records relating to the debtor’s estate or affairs which are in the possession or under the control of the debtor or anyone else.

6.9.6 Private and public examination

Uncooperative persons may additionally be warned of the trustee’s power, under sections 44 and 45 of the Act, for the private or public examination of any person known or suspected to have in their possession documents or information relative to the debtor’s financial affairs. See Sections 4.8 and 4.9 to these Notes.

6.9.7 Rights to retention or return

As property of the debtor, their books and records vest absolutely in the trustee (subject to Section 39A of the Act, and the debtor accordingly has no right to their return, except in the following circumstances:

- the bankruptcy is recalled;
there is a reversion to the debtor after all the debts have been paid, with interest; and,

any right to pursue the recovery of debts owing to the debtor or any other right of action has been abandoned to the debtor and the trustee holds records or documents relative thereto.

When there is any such reversionary right, the interim trustee or trustee, as the case may be, must take every reasonable step to return to the debtor all papers, books and records which the trustee has taken possession of.

6.9.8 Disposal of records no longer required

In all other cases, subject to Part 6.9.9 below, the trustee is entitled to dispose of the debtor’s papers, books and records whenever they have no further use for them. Such records, particularly those identifying the debtor by name, should be disposed of carefully as ‘confidential’ waste. Entirely at the discretion of the trustee, a debtor who requests the return of their papers, books and records may be allowed to collect or have them delivered to him, at their own expense.

6.9.9 Preservation of certain records

Certain records must not be disposed of unless the trustee is satisfied that there is no third party interest:

Company pension scheme:

If it is known that there is a company pension scheme, it is advisable for any relevant papers, including policies, trust deeds, rules or equivalent documentation, and the wages records, to be identified and separated at an early date from the remainder of the records. Unless the trustee is certain, from consultation with other parties concerned, that those records will not be needed in connection with the pension fund, they shall be preserved until they are no longer required.

Historical interest (general):

Consideration should be given to whether any records might be considered to be of historical interest and ought to be preserved. If so, or if anybody, such as a local museum or the Scottish Record Office, has expressed interest in any documents, the matter must be referred to The Accountant.

Historical interest (insurance companies):

Records of debtors who traded as insurance brokers should not be destroyed without prior reference to The Accountant, supplying a list of the records. The matter will then be referred to the History Committee of the
Chartered Insurance Institute, who may wish to arrange for the preservation of some or all of the records.

6.9.10 Time of disposal

Generally, records should not be disposed of or returned until the trustee has received their discharge. In particular, trustees should have regard to the following in which records might be required:

Asset realisation:

If assets, especially book debts, remain unrealised, care should be taken not to dispose of any records which could be useful in this connection.

Offences and BROs:

A check should be made with The Accountant as to whether any prosecution or BRO proceedings are outstanding and whether any papers etc. may be relevant to such proceedings.

Private or public examination:

If there is a real possibility of a private or public examination being held, consideration should be given to whether any records are likely to be required in that connection.

Application for deferral of debtor’s discharge:

If an application is to be made for deferral of the debtor’s discharge, it may be necessary to retain records which are likely to be referred to at any hearing.

Inland Revenue/DOSS involvement:

The Inland Revenue and the DWP should be given an opportunity to inspect any records before they are destroyed. Except in cases of urgency, where notification may be given by telephone, the inland Revenue and DWP should be given six weeks’ written notice of intention to destroy. It may be convenient in most cases for this aspect to be dealt with at the same time as contacting Customs and Excise (see following section on ‘Records relating to VAT’).

Records relating to VAT:

The age of a business record is determined by the date of the last entry in it. Where records are on that basis more than six years old, they can be destroyed without reference to HM Customs and Excise.

Where records are those of a person not registered for VAT, they can be destroyed at any time without reference to Customs and Excise.
However, where there is no VAT registration but it is apparent that the person concerned should have been registered, Customs and Excise should be notified and the case treated for the purpose of these provisions as if there had been a registration.

Where records are less than six years old but more than a year has elapsed since the date of bankruptcy, they can be destroyed without reference to Customs and Excise.

Where it is intended to destroy records within the period of one year after the date of bankruptcy and the records are less than six years old, a letter shall be sent to Customs and Excise. A copy of the letter must also be sent for Customs and Excise to endorse and return to the trustee as authority to destroy the records concerned.

Where urgent authority is required, e.g. to avoid having to take possession of vast quantities of papers, ‘expedited treatment’ should be requested on the letter, and telephone contact should be made with Customs and Excise to put them on notice that such a request is being sent. This will enable Customs and Excise to respond more quickly to the request. ‘Expedited treatment’ should not be requested as a matter of course.

Civil proceedings:

If it is known that there are civil proceedings, or the possibility of them, in connection with the affairs of a debtor, the persons concerned must always be asked in writing whether they wish any records.

6.10 Effect on bankruptcy of the Debt Arrangement and Attachment (Scotland) Act 2002

6.10.1 Articles kept out with a dwelling house

Trustees should have regard to the effects of the Debt Arrangement and Attachment (Scotland) Act 2002. Section 11(1), the relevant part of which is repeated below, lists those items kept out with a dwelling house which are exempted from attachment. Such articles are expressly exempted from vesting in terms of Section 33(1)(a) of the Act.

1. any implements, tools of trade, books or other equipment reasonably required for the use of the debtor in the practice of the debtor’s profession, trade or business and not exceeding in aggregate value £1,000 or such amount as may be prescribed in regulations made by the Scottish Ministers;

2. any vehicle, the use of which is so reasonably required by the debtor, not exceeding in value £3,000;
3. a mobile home which is the debtor’s only or principal residence;

4. any tools or other equipment reasonably required for the purpose of keeping in good order and condition any garden or yard adjacent to, or associated with, a dwelling house in which the debtor resides.

6.10.2 Articles kept in a dwelling house

Trustees should have regard to the effects of Part 3 and Schedule 2 to the Debt Arrangement and Attachment (Scotland) Act 2002, the relevant parts of which are listed below, and detail those items kept in a dwelling house which are exempted from attachment. Such articles are expressly exempted from vesting in terms of Section 33(1)(aa) of the Act.

a. articles with sentimental value the aggregate of which do not exceed £150.00;

b. articles exempted under Section 33(1)(a) of the Act, listed at 6.10.1 to these Notes;

c. clothing reasonably required for the use of the debtor or any member of the debtor’s household;

d. implements, tools of trade, books or other equipment reasonably required for the use of any member of the debtor’s household in the practice of such member’s profession, trade or business, not exceeding in aggregate value £1,000;

e. medical aids or medical equipment reasonably required for the use of the debtor or any member of the debtor’s household;

f. books or other articles reasonably required for the education or training of the debtor or any member of the debtor’s household not exceeding in aggregate value £1,000;

g. articles reasonably required for the care or upbringing of a child who is a member of the debtor’s household;

h. toys for the use of any child who is a member of the debtor’s household;

The following articles belonging to a debtor shall be exempt from attachment if they are at the time of the attachment for the use of the debtor or a member of their household:

1. beds or bedding;

2. household linen;

3. chairs or settees;
4. tables;
5. food;
6. lights or light fittings;
7. heating appliances;
8. curtains;
9. floor coverings;
10. furniture, equipment or utensils used for storing, cooking or eating food;
11. refrigerators;
12. articles used for cleaning, drying, mending, or pressing clothes;
13. articles used for cleaning the dwelling house;
14. furniture used for storing:
   (a) clothing, bedding or household linen;
   (b) articles used for cleaning the dwelling house; or
   (c) utensils used for cooking or eating food;
15. articles used for safety in the dwelling house;
16. tools used for maintenance or repair of the dwelling house or of household articles;
17. computers and accessory equipment;
18. microwave ovens;
19. radios;
20. telephones;
21. televisions.

6.11 Heritage (includes the debtor’s family home)

The trustee will wish to consider many factors before deciding how and when to realise the estate’s interest in heritable property, including the debtor’s family home.
The **Home Owner and Debtor Protection Act 2010** introduced a requirement for a trustee to notify a debtor’s Local Authority that the trustee is intending to dispose of a debtor’s right or interest in a family home.

In accordance with Section 40(3A) of the Act, prior to commencing proceedings to obtain the authority of a sheriff, under Section 40(1)(b), to sell or dispose of a debtor’s right or interest in a family home, the trustee must give notice of the proceedings to the Local Authority, in whose area the home is situated. This must be done using the statutory **Form 26** which can be found at Appendix M to these Notes.

This requirement is applicable in all cases and is not restricted to bankruptcies awarded on, or after, 15 November 2010.

All heritable property must be actioned within three years. However, the trustee is required to **immediately** take steps in a bankruptcy to realise or abandon heritage. If the trustee has not concluded action before the end of 3 years then the trustee must send a memorandum to the keeper of the register of inhibitions under section 14(4) of this Act to renew the trustee’s interest in a property for a further 3 years.

- are there arrears and, if so, has the secured creditor taken steps to repossess the property?

- is there any equity in the property? A professional valuation should be done as early as possible. A chartered surveyor or other suitably qualified third party should complete the valuation. The valuation should detail the maximum market value. The valuation should be specified as the current Royal Institution of Chartered Surveyors (RICS), Red Book equivalent of “Open Market”, and not impose other restrictions such as a forced sale or the sale price expected for a transaction concluded within a truncated period.

- the secured creditor should be asked to advise the amount outstanding on the loan.

- is the non-debtor spouse or a third party willing to buy out the trustee’s interest? This would include settling the secured loan or having it varied to transfer the debtor’s liability to the spouse or third party. The estate’s interest in any associated endowment policy (whether or not assigned to a secured creditor) should also be taken into account. Each party shall bear their own legal costs.

- if there is little or no equity, can title be transferred for a nominal sum?

The Accountant recommends that the trustee should not wait for it to appreciate in value unless there is no co-operation from the debtor, spouse or co-owner. If the debtor does not wish a formal
re-conveyance the trustee should consider issuing Form 22, to formally abandon their interest.

- if it is a family home, will the relevant consent in terms of Section 40(1)(a) be given?

- if consent is not given or a co-owner refuses to agree to a sale, is there enough equity to justify an application to the court for authority to sell?

- trustees should consider if the Scottish Government sponsored Mortgage to Rent scheme should be recommended to the debtor for consideration. However, trustees must be aware of the maximum amount of funds which can be released to a trustee, under the terms of this Scheme, and assess if it will be in the best interests of creditors to accept an offer on a property under the terms of the Mortgage to Rent scheme.

- if the trustee decides to sell the property, has formal intimation been given to the secured creditor of their intention to do so?

- if property is to be sold on the open market, has the secured creditor agreed to underwrite the costs in the event of the sale price being insufficient to cover the secured loan?

- if the purchase offer is not enough to settle the secured debt, has the consent of all secured creditors been obtained to acceptance of the offer?

- has the market been fully tested and the approval of The Accountant or commissioners been given to accepting an offer? See Appendix L for The Accountant’s application form.

- if the negotiations to transfer title are likely to extend beyond the three years, has the inhibition been renewed?

- if the trustee has exhausted all attempts at disposing of the interest in the property, has the debtor been formally notified of the potential consequences should it be sold at a later date?

6.11.1 Marketing and Conveyancing

The trustee must consider all available options for realising the equity in a property to try and ensure the most cost effective means of realising the maximum return from the estate.

If the trustee decides to sell the heritable property, they must ensure it is exposed to the full potential of the open market. If the decision is to sell the heritable property on the open market, the trustee must have the following information and documents:
• recent valuation;
• up to date redemption details, detailing available equity;
• property search (confirmation of ownership);
• a Home Report, if appropriate; and
• consent to sell under Section 40 of the Act if a family home or
• debtor’s consent and your explanation if offer is for less than market value.

The trustee must consult with The Accountant regarding their intention to sell or dispose of a property, which vests in the trustee, prior to commencement of the proposed action. See Section 6.11.9.

If the property fails to sell on the open market, the trustee may consider it more appropriate to pursue a sale through the auction process. The trustee should consider the following:

i. that reasonable endeavours have been undertaken to secure a sale on the open market, for at least nine months;

ii. you have not received a viable offer;

iii. further marketing costs and benefit to the estate;

iv. you are satisfied that you are obtaining market value;

v. placing a reserve price on the property.

The property should be withdrawn from the appointed estate agent.

6.11.2 Home Report

A Home Report is required under the Housing (Scotland) Act 2006 for any property put onto the market from 1 December 2008, with the following exceptions:

i. new build houses
ii. newly converted premises
iii. properties to be demolished
iv. dual use
v. mixed sales

A Home Report is a full survey commissioned by the seller of the heritable property and will remove the need for multiple surveys in most cases. The Home Report will contain:
i. a survey of the property;

ii. an Energy efficiency report, and

iii. a property questionnaire – must be completed and signed by at least one co-owner with formal authority from any co-proprietors

6.11.3 End of three year period

If, at the end of a three year period beginning from the date of bankruptcy, as defined under Section 12(4) of the Act (subject to Section 39A(7) of the Act), the trustee has failed to take any of the required action against the family home (as defined in Section 40(4)(a) of the Act), as detailed in Section 39A(3) of the Act, the rights and interests of the debtor’s family home shall be reinvested in the debtor.

6.11.4 Actions for consideration by trustee

The actions a trustee can take to prevent the family home reinvesting in the debtor after three years, as detailed in Section 39A(3) of the Act, are:

a) disposal or realise the debtors interest/right in the home;

b) conclude missives for sale of the right or interest;

c) send a memorandum to the keeper of the register of inhibitions, as described under Section 14(4) of the Act;

d) take notice of title in relation to the debtor’s right or interest of the property;

e) commence proceedings:

   I. to sell or dispose of the debtor’s right or interest;
   II. in an action for division of sale of the family home; or
   III. in an action to obtain vacant possession of the family home.

f) reach an agreement with the debtor under which:

   • the family home will cease to form part of the debtor’s sequestrated estate; and

   • the property is reinvested in the debtor, without need for any Conveyancing, disposition or other transfer.
6.11.5 Action to be taken by trustee

If the trustee has identified, following consideration of Section 6.11 of these Notes, that it will be in the financial interests of the creditors to realise any equity in the family home, the trustee must take any of the appropriate actions to secure or realise the asset, within three years of date of bankruptcy.

6.11.6 Debtor fails to declare their interest in a family home

If a debtor does not inform their trustee of their right or interest in the family home within three months of the date of bankruptcy, the three year period commences from the date the trustee became aware of the debtor’s right or interest, in accordance with Section 39A(6) of the Act.

6.11.7 Extension of the three year period

A sheriff, on application by the trustee, may extend the three year period as they consider appropriate.

6.11.8 The Accountant’s expectations

The Accountant expects that a decision is made and action started against a debtor’s family home within the one year period of the debtor’s bankruptcy. The fear is that, post discharge, a debtor may be less likely to co-operate with the trustee and hence additional time and cost may be required to realise the property.

The Accountant expects a trustee to consider the implications any action over a property will have on the debtor and their family. The trustee must ensure that the debtor is fully informed about the action that is being taken against their property and the implications for the debtor and their family if the action is successful.

If there is the expectancy that the outcome of action will be that the debtor is removed from their home, the debtor should be provided with information about where they can seek support and information in the event that they will become homeless.

6.11.9 Need to consult with The Accountant

In accordance with Section 39(1) of the Act, trustees shall consult with The Accountant over their intentions with regards to management of property which vests in the trustee.

The trustee must send The Accountant a completed Appendix L, prior to commencing action on any property and provide the following information:

- the action proposed;
• the reasons for the action;

• details of communications with the debtor;

• if a sale is proposed, what alternatives to a sale have been considered and rejected;

• full details of any fees or costs to be paid to the trustee by a third party.

The trustee should also provide:

• a copy of the relevant property search;

• copies of any relevant correspondence i.e. letters to debtors, negotiations with third parties to reach an agreed settlement, agreement with secured creditors to pay fees and outlays of trustee.

The Accountant will respond to the Appendix L within 20 working days.

Where consent is given to the trustee’s proposal and they are unable to progress the action within 12 months of agreement an update should be provided to AST.

6.11.10 Registering as a Landlord

Where a multi-tenanted property is currently vested in a trustee, the trustee is obliged to be registered as a landlord with the appropriate Local Authority, in accordance with Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

Only The Accountant, when appointed trustee, is exempt, as a Crown body, from the requirement to register as a landlord in accordance with Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004).

6.11.11 Heritable property which has been conveyed to a third party

This does vest in the trustee – Burnett’s trustees v Grainger 2002 SLT 699. If a seller disposes a property to a third party and subsequently becomes bankrupt before the third party registers title, the property will still vest in the trustee.

However, Section 31(8)(aa) of the Act, makes it clear that a “debtor’s estate” includes any property of the debtor, title to which has not been completed by another person deriving right from the debtor.

Sections 31(1A) and (1B) of the Act afford a measure of protection to the third party purchaser, in that –
“It shall not be competent for —

(a) the trustee; or

(b) any person deriving title from the trustee,

to complete title to any heritable estate in Scotland vested in the trustee by virtue of their appointment before the expiry of the period mentioned in subsection (1B) below.

(1B) That period is the period of 28 days (or such other period as may be prescribed) beginning with the day on which —

(a) the certified copy of the order of the sheriff granting warrant is recorded under subsection (1)(a) of section 14 of this Act; or

(b) the certified copy of the determination of The Accountant awarding bankruptcy is recorded under subsection (1A) of that section, in the register of inhibitions.”

This means that in the race to the register the trustee has a handicap which makes it virtually impossible for the trustee to win the race as against a grantee for value acting in good faith and with reasonable diligence.

On the date of settlement the buyer may be excusably unaware of the bankruptcy and yet the bankruptcy will mean that the seller’s power to alienate assets is terminated. Section 32(9ZA) of the Act extends the provision, so that if someone buys from a person who has just been sequestrated, and, acting in good faith, completes title promptly, the title will be good.

6.11.12 Sale of property on behalf of a third party

If an Insolvency Practitioner, whilst acting as trustee, agrees, for a fee, to sell a property which does not vest in the trustee, e.g. on behalf of a secured lender who has repossessed the debtor’s property prior to sequestration, all fees and costs relating to this agreement and sale must not be included in the accounts of the sequestrated estate, as they will not constitute outlays and remuneration of the trustee in the administration of the debtor’s estate.

The Insolvency Practitioner, whilst the appointed trustee, must disclose separately to creditors and The Accountant, details of any fees and disbursements received by them which is not to be paid from the debtor’s estate, with details of the nature of the payments.

The Accountant requires this information to be disclosed to them in a Note to the sequestration accounts for the period of the sequestration during which the third party fee became due.
The Accountant is aware that it is not uncommon for a trustee to agree to sell a debtor’s property on behalf of a secured lender where there is a shortfall to the lender and/or no anticipated surplus available to unsecured creditors. The trustee will agree to sell the property on behalf of the secured lender, and in turn will be paid a fee by the secured lender for this work.

The Accountant considers it important for trustees to be fully transparent with regard to notifying the Accountant/Commissioner(s), creditors and debtors, of the terms and conditions that have been agreed with a secured lender, including the financial terms of the agreements.

The requirement for this transparency is set out in Sections 1 to 7 of SIP9 Scotland.

The Accountant considers it important that all interested parties are aware of the background and reason why the trustee is selling a property on behalf of the secured lender, to help inform any decision they may make with regard to applying their legal right to challenge the actions of the trustee.

As a property forms part of the debtor’s estate, regardless if it is in ‘Nil’ or ‘negative’ equity, the trustee is required, before commencing any action regarding the property, to submit their proposal for the property to the Accountant for consideration, in accordance with section 39(1) of The Bankruptcy (Scotland) Act 1985, as amended, using Appendix L to these Notes.

To allow the Accountant to make an informed decision when an Appendix L is received, the trustee must submit the following supporting information to the Accountant:

- a copy of the agreed terms between the trustee and the secured lender to sell the property;
- details of fees and outlays agreed to be paid by the secured lender, including details of the basis for how the fees are to be calculated;
- a copy of the agreement of any subsequent secured lender(s), where their security will not be paid in full, that confirms their agreement to the terms between the trustee and the other secured lender;
- a professional valuation of the property;
- confirmation of the redemption figures for all secured loans; and
- an explanation of why, in the trustee’s opinion, the proposed sale will comply with the conditions specified in Section 3(8) of the Act;
6.11.13 Property held on trust

This does not vest in the trustee. If the debtor has assets which are held on behalf of a third party, or if the debtor has assets which they have received from a trust by a third party, such assets do not vest (Section 33 (1)(b) of the Act refers).

6.11.14 Property subject to restraint order under Proceeds of Crime Act

This does not vest with the trustee (Section 420 of The Proceeds of Crime Act 2002 (2002 Act) refers). The following property is excluded from the debtor’s estate in terms of the Act:- Property subject to a restraint order made under section 41, 120 or 190 of the 2002 Act;

Property subject to an order under section 50 (confiscation orders) of the 2002 Act;

Property for which an enforcement administrator has been appointed to deal.

If a restraint order has been made in relation to heritable property, the property does not vest unless the restraint order is registered in the Sasines or Land Register before the award of bankruptcy – 2002 Act, Section 420 (3).

6.11.15 Inheritance

This does vest in the trustee, unless the inheritance is held on trust for or by the debtor, in which case it does not vest. If held in trust for the debtor, it only vests if the debtor becomes entitled to the capital of the trust during the period of their bankruptcy.

6.11.16 Special destination

Heritage held in joint names subject to 'special destination', i.e. held in joint names under survivorship destination, such as debtor and spouse or other party or survivor, may present a possible problem.

The Accountant is presently advised that the debtor’s share vests in the trustee and may be sold by the trustee, for the benefit of the creditors, to the co-proprietor or, with the co-proprietor’s consent, the whole property may be exposed for sale on the open market. Should the co-proprietor not co-operate in its disposal, it may be appropriate to proceed by way of an action of division and sale.

If the debtor dies before the trustee registers a conveyance following sale in the Register of Sasines or in the Land Registry, then the debtor’s interest passes direct to the survivor. In a recent decision, however, the Extra Division of the Inner House of the Court of Session held that in such
circumstances, the debtor’s interest passes to the survivor burdened by the
debtor’s debts.

Consequently the trustee is entitled to take action to ensure that the
survivor takes no greater right than the debtor had had for the purpose of
restoring to the trust estate the value of the property which is equivalent to
the value of the debts by which it is burdened.

Accordingly therefore, the trustee is entitled to look to the survivor to
recover either the value of the property transferred or the amount of the
debtor’s debts, whichever is the lesser.

6.12 Income.

6.12.1 Income prior to and post-bankruptcy

Income of the debtor, as at the date of bankruptcy, does vest with the
trustee (Section 31(1) of the Act refers).

Income the debtor receives during the period of bankruptcy, does not
vest. Section 32(1) of the Act. However the trustee is entitled to seek a
contribution from such income.

6.12.2 Tax credits

Working tax credits and child tax credits do not vest. Section 45 of the
Tax Credits Act 2002 as amended.

6.13 Repayments and refunds – post bankruptcy

It is The Accountant’s view that repayments and refunds can and should be
regarded as acquirenda and that Section 31(6) of the Act is available to any
party who holds a dissenting view.

6.13.1 The Act does not define what is meant at Section 32(1) of the Act by
‘income of whatever nature’. What is known, however, is that it does not
include any estate, property or right which has vested in the trustee.

When deductions have been made, or expenditure incurred, e.g. payment
to a post-bankruptcy creditor, from a debtor’s income and it later becomes
known that the deductions were too great or that certain sums were
overpaid to a creditor, a right arises in the person of the debtor - a right of
recovery. It is The Accountant’s view that this ‘right of recovery’ is
acquirenda, i.e. estate vesting in the trustee under Section 32(6) of the Act.
6.13.2 For estate to vest under Section 32(6) of the Act it is necessary that:

- it has been acquired by the debtor after the date of bankruptcy and before the debtor’s discharge;
- it would have vested in the trustee if it had been part of the debtor’s estate on the date of bankruptcy.

6.13.3 If the right of recovery arises before the date of the debtor’s discharge, the requirement of the first item above is met.

As regards the satisfaction of the second item, it seems to The Accountant that if, at the date of bankruptcy, the debtor had a right of recovery in respect of overpaid tax, or miss-sold or miss-applied bank policies or charges, then that right would vest in the trustee and remains vested in the trustee until the expiry of 4 years after the date of bankruptcy, section 31(5A).

The right is not a right to income as such. It is a distinct right relating to the repayment of excess deductions made by, for example, the Inland Revenue or a bank. The nature of that right does not vary with the time at which it arises. Thus, if the excess deductions of tax, or charges, have been made after the date of bankruptcy, the debtor’s right remains just that, a right to repayment not a right to income. This right to repayment appears to The Accountant to satisfy Section 32(6) of the Act for the purposes of estate vesting in the trustee.

6.13.4 It is The Accountant’s view that the same principle applies to any post-bankruptcy creditor who had been overpaid by the debtor. A right of recovery would arise. The Inland Revenue are in a different position from other post-bankruptcy creditors in that they can make deductions directly from the source of the debtor’s income whereas other post-bankruptcy creditors are paid by the debtor themselves.

That distinction does not however alter the essential nature of the right which arises in the event of overpayment, i.e. a right of recovery, not a right to some new source of income.

6.14 Life Assurance Policies

A trustee should always have their interest noted in a policy even if it has no current surrender value and furthermore they should obtain an acknowledgement from the insurer that their interest has been recorded.

This equally applies to policies where payment is only either made on the death of one of the parties or, assigned to a third party. Failure to register their interest may result in a trustee being held liable if the failure results in a loss to the estate.
Any policy which has a surrender value will vest in the trustee for the duration of the bankruptcy and the trustee should attempt to realise the asset by surrendering the policy or having a third party buy out the trustee’s interest.

Any policy which does not have a surrender value should be treated as a non-vested contingent asset which will vest in the trustee for a period of four years from the date of bankruptcy.

It may be practical for the trustee to inform the insurance company when they consider the an insurance policy is no longer vested in the estate i.e. on discharge of the trustee or the end of the four year period. This will allow a debtor to access the funds in future years without the requirement to first obtain consent from the former trustee.

6.15 Mail re-direction.

In the judgement dated 20 June 2000, Foxley v The United Kingdom, the European Court of Human Rights considered the re-direction of debtor’s mail under Section 371 of the Insolvency Act 1986.

Whilst that section does not apply to bankruptcies, the principles laid down in the Foxley case should be followed. In particular, debtor’s mail should only be redirected with the consent of either the debtor or the Sheriff.

Correspondence that is marked as being from the debtor’s legal advisers or is otherwise apparently privileged material should not be opened.

6.16 Motor vehicles

Only vehicles valued at over £3,000 vest in the trustee (Section 6.10.1 refers). Section 5 (2ZB)(b)).

If a vehicle is valued at over £3,000 and the trustee thinks that it is cost-effective to sell it, it shall be sold as soon as possible unless the vehicle is considered essential to the debtor to get to work so that they can make a meaningful contribution to their estate. But, if the debtor is allowed to keep a vehicle that could vest in the trustee, they must maintain the agreed regular contributions. If they fail to do so without reasonable excuse, the trustee shall repossess the vehicle as soon as possible and sell it if that is cost-effective.

6.16.1 Trustees are advised that they may incur personal liability for any third party claims arising from the debtor’s use of a motor vehicle vesting in or under the control of the trustee. Moreover, trustees may be guilty of a criminal offence in terms of Section 143 of the Road Traffic Act 1988, if they permit the debtor to use such a vehicle without proper insurance. In this context simply leaving a vehicle in the possession or control of the
debtor may be sufficient to constitute permission for the purposes of the Road Traffic Act 1988.

6.16.2 It is accordingly suggested that where a trustee decides to permit the debtor the use of their motor vehicle that they obtain a written acknowledgement that this is conditional upon the debtor having and maintaining insurance, covering at least the third party risks referred to in the Road Traffic Act 1988 and upon production of a valid certificate of insurance to that effect.

Any permission given to a debtor should be expressly limited to the date of expiry of the current insurance certificate.

6.16.3 Where a trustee decides to abandon a motor vehicle to the debtor, because it is of no realisable value, the trustee should inform the debtor of that decision in express terms. If the trustee does not do so, there may be an inference that they are merely permitting the debtor to use the vehicle and the trustee could be subject to the risk of potential liability under the Road Traffic Act 1988.

Accordingly, any abandonment should be clearly expressed in writing to the debtor and should specify that as from the effective date of abandonment, the debtor is the owner of the vehicle and is wholly responsible for satisfying all legal requirements in respect of the ownership and use of that vehicle, including insurance.

It should also be stated that the trustee will consider the abandonment to be effective only from the date on which they receive a written acknowledgement of the abandonment from the debtor.

The trustee must remain satisfied as to the insurance cover for any use of the vehicle by the debtor prior to the effective date of abandonment.

6.16.4 Where a trustee, their staff or an agent has cause to use, or permit the use of a motor vehicle which forms part of a sequestrated estate, the trustee must ensure that such use is covered by appropriate insurance, in accordance with the Road Traffic Act 1988.

The trustee must also ensure that the vehicle is covered by a current vehicle Excise Licence and, if appropriate, a current MOT Certificate. Since expiry of the MOT Certificate would invalidate the insurance, approval to operate the vehicle should be limited to the date of expiry of the certificate if earlier than the insurance renewal date.

6.17 Partnerships & limited companies

6.17.1 Trustee’s powers to petition for bankruptcy - A case has arisen where a partnership and one of the two partners had been sequestrated and the trustee wished to petition for the bankruptcy of the other partner. For the
avoidance of doubt, a trustee has no power to petition in such circumstances.

6.17.2 The basis for this view is as follows. Under Scots Law, a partnership has a separate legal persona; the assets and liabilities of a partnership being separate from those of the individual partners who agree on their capital contribution to the firm. To protect creditors of the firm, however, and to ensure that there is no limited liability in the case of the partnership, the partners are jointly and severally liable for all debts and obligations of the firm incurred while they were partners. This liability, however, is in relation to creditors. The partners are not liable as principals; they are liable rather as guarantors.

Their liability is therefore a secondary liability, effectively guaranteeing the firm’s obligations to its creditors. (See *Bell’s Commentaries II, 507-508*)

6.17.3 The trustee on the sequestrated estate of the firm can rank on the partner’s estate for debts due by the partner to the firm on capital account. It is their duty to do so in order to ingather the whole of the firm’s estate for distribution to its creditors. A firm is only a creditor of its partners in respect of a debt due by the partners to the firm, namely any debit on their capital account. Likewise, a firm is only a debtor of its partners in respect of a debt due by the firm to the partners.

6.17.4 While a solvent partner may appear to be able to walk away from the firm’s debts, the duty of the trustee on the estate of the firm is to ingather the estate of the firm.

The whole point of joint and several liabilities of partners are to enable a creditor to pursue any one partner or the whole of the debt due by the firm to him.

In so far as a creditor of a firm is not paid in full out of the sequestrated estate of a firm, they are entitled to pursue any one or more partners for the balance of the debt due to him. If a creditor chooses not to do so, that is up to him. The trustee’s role is not to step into the shoes of the creditors in this respect, but to ingather and distribute the firm’s estate to its creditors. They only act as creditor in relation to the partners insofar as there is a balance owing by them on their capital account.

It is on this basis that, once the firm’s assets have been distributed, even though the firm’s creditors have not been paid in full, the trustee on the sequestrated estate of the firm is ‘exonerated, leaving the creditors to seek the unpaid balance of their debts from the separate estate of the partners’ (*Bell’s Commentaries II, 561-562*).
partner to the firm on their capital account. (See *Dunlop v Speir (1756) M. 14610*)

This is to be distinguished from a case where the partners have all paid up their capital accounts in full, but the firm’s estate is insufficient to pay its creditors in full. A claim on a partner’s estate in relation to the deficiency of the firm’s funds can be made only by proper creditors of the firm. It cannot be made by a creditor who was also a partner. Nor can it be made by the trustee of the estate of the firm, as the title to sue a partner on their obligation as guarantor of the firm’s debts is in the individual creditors. It is not an incident of the firm’s estate. A partner’s liability to make up any deficiency is based on their liability as guarantor. (See *Laing Brothers & Company’s Trustee v Low (1896) 23R.1105*)

In another case, the trustee sought approval to petition for appointment of a liquidator to a company in which the debtor was a majority shareholder. In this case it is quite clear that the debtor’s shares in the company vest in the trustee; accordingly the trustee steps into the shoes of the debtor and has the same right to petition for appointment of a liquidator on the same grounds on which the debtor themselves could have petitioned.

6.17.6 Partnership estates - Quite often, estates of an individual debtor are sequestrated for partnership debt - possibly because the petitioning creditor has dealt solely with that individual and is unaware of the existence of a partnership.

Subsequently, the trustee finds that the bulk of assets revealed to him by the debtor are, in fact, ‘partnership’ assets which, being assets of a separate legal person, do not vest in the trustee by virtue of their appointment.

No specific duty is imposed upon a trustee when this type of situation comes to their notice. The creditors may indeed mistakenly believe that these assets are protected. It appears to The Accountant that when a trustee becomes aware of such a situation they should send a notice to all creditors advising them:

- that he, as the trustee on the estate of the individual partner, cannot realise or otherwise deal with the partnership assets;

- that they have no title to petition the courts for bankruptcy of the partnership to secure protection for those assets, but creditors of the partnership may, and;

- point out that, unless action is taken by a partnership creditor, those partnership assets are at risk and may disappear.

Despite the above, if all the partners of the firm have been sequestrated and the firm is apparently insolvent, and either the individual partners are creditors of the firm or if the partnership was dissolved by the bankruptcy of
one or all of the partners, it would in these circumstances be open to the trustee(s) of the individual partners to petition for the bankruptcy of the partnership, with the concurrence of a qualified creditor.

6.18 Payment of funeral expenses

Section 129(1)(c) of the Act does not expressly distinguish between a debtor who has died prior to, or after, the date of their bankruptcy and prior to the distribution of the debtor’s estate by the trustee. If a claim for funeral expenses and administration costs is received by the trustee in respect of a debtor who has died prior to the distribution of the estate funds, the trustee should record in the bankruptcy accounts, for determination by the Accountant, the amount of the funeral expenses and administration costs that they consider have been reasonably incurred and should be paid as an outlay from the debtor’s estate.

The determined amount of the funeral expenses and administration costs are to be paid from the funds of the debtor’s estate, in accordance with the order of distribution prescribed in Section 129 of the Act.

6.19 Pensions

The general position is that where the debtor is in receipt of any form of pension or annuity at the date of bankruptcy, such payments are classed as income which, as per Section 32(1) of the Act, does not vest in the trustee. It is of course open to the trustee to seek a contribution from such income through a DCO, as per Sections 32(4A) or 32(2) of the Act, including a one-off contribution from any lump sum payment received by the debtor.

It is arguable that a lump sum payment constitutes acquirenda which would vest in the trustee as per Section 32(6) of the Act but this proposition has not been tested and to seek a contribution rather than attempt to claim the whole sum may be regarded as a ‘safer’ option.

6.19.1 Occupational pensions - Where a debtor has an entitlement to a pension, including any lump sum element, as a result of their employment, i.e. an occupational pension scheme, even if that pension becomes payable on a relevant date (a date after the date of the debtor’s bankruptcy and before the date on which the debtor’s discharge becomes effective (Section 32(10) of the Act)), the pension is specifically exempted from vesting in the trustee as per Section 32(2) of the Act (Sections 11 or 12 of The Welfare Reform and Pensions Act 1999). The trustee may of course seek a DCO, as per Sections 32(4B) or 32(2) of the Act.

Trustees should also be aware that The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Amendment Order 1993 [Statutory Instrument No. 1993/598], which came into force on 1 April 1993,
amended the position as regards assignments of military pensions or gratuities.

In terms of this Statutory Instrument, any assignment or charge, or any agreement to assign or charge any pension, retired pay, allowance or gratuity which may be or has been awarded under this Order shall be void, and, in the event of the bankruptcy of any person to whom such a payment has been awarded, the payment does not pass to the trustee.

6.19.2 Personal pensions - The position as regards personal or private pensions has changed since the implementation of Sections 11 and 12 of the Welfare Reform and Pensions Act 1999. These pensions no longer vest in the trustee for those bankruptcies awarded after 29 May 2000.

For all bankruptcies awarded prior to 29 May 2000 personal pensions continue to vest in the trustee. The new provisions relate to pensions approved by the Inland Revenue.

Unapproved personal pensions continue to vest in the trustee, although there are provisions to allow the trustee to come to an agreement with the debtor that an unapproved scheme will not vest where it is the debtor’s sole or main pension, or the debtor makes application to the court for an ‘exclusion order’ in relation to part or all of the pension (see the Occupational and Personal Pension Schemes (Bankruptcy) Regulations 2002).

However, The Accountant’s policy on the treatment of personal pensions in bankruptcies awarded after 29 May 2000 is set out below:

As the policy objective is to protect approved pension schemes from the normal consequences of bankruptcy, it follows logically that payments by the debtor to produce those pensions benefits should be treated as allowable expenditure when calculating surplus income for the purpose of assessing a DCO. Payments by the debtor to a non-approved scheme need not be so treated, unless the court has agreed that the non-approved pension does not vest in the trustee.

If the pension from the approved scheme comes into payment during the period of bankruptcy, then all pension benefits, including the lump sum, shall be taken into account for the purpose of calculating a contribution.

The trustee should consider challenging ‘excessive contributions’ to an approved scheme. They may also be able to use these provisions to challenge a debtor’s decision to contribute to a new approved personal pension scheme or to increase their contributions to an existing scheme.

Section 16 of the Welfare Reform and Pensions Act 1999 will allow the trustee to seek a court order to recover ‘excessive contributions’. Contributions are defined as such if they were made for the purpose of putting assets beyond the reach of creditors.
There is no change in the treatment of personal pensions in awards of bankruptcy prior to 29 May 2000.

6.19.3 Where a debtor is in receipt of or has an entitlement to a pension, including any lump sum element, as a result of their employment (that is an occupational pension scheme), that pension is regarded as income of the debtor and so it does not vest in the trustee, as per Section 32(2A) of the Act, as inserted by Section 91 of The Pensions Act 1995. The trustee may of course seek a contribution from the debtor through a DCO under Sections 32(4A) and 32(2).

The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions [Statutory Instrument No 1993/598] which came into force on 1 April 1993, amended the position as regards assignments of military pensions or gratuities.

Under this Statutory Instrument, any assignment or charge, or any agreement to assign or charge any pension, retired pay, allowance or gratuity which may be or has been awarded under this Order shall be void, and, in the event of the bankruptcy of any person to whom such a payment has been awarded, the payment does not pass to the trustee.

Where however the debtor has provided for their own pension by way of a retirement annuity pension or personal pension scheme, such policies vest in the trustee and they are entitled to any income arising from them.

In terms of chapter III, part XIV, Section 620 of the Income and Corporation Taxes Act 1988, retirement annuity policies cannot be surrendered or assigned and while the trustee must advise the insurance company of their right to the policy and the proceeds, the trustee will be unable to realise the asset until the policy matures, normally at age 60. Personal pension schemes, which are regulated by chapter IV, part XIV, of the 1988 Act allow the benefits to be paid at age 50.

While the trustee’s entitlement is not in doubt, practical problems may arise depending on the value of the benefits and the date of maturity. Where the policy matures before the debtor’s discharge, the trustee should have the payments made direct to themselves and should continue to collect until such time as the debts are settled and expenses recovered.

Clearly, if there is an option to take all or part in a lump sum that option should be exercised by the trustee. In cases where the date of maturity occurs after the discharge of the debtor, entitlement to the proceeds still vests in the trustee but a decision will have to be made as to whether it is worthwhile for the trustee to remain in office pending maturity.

Even where the policy matures at a relatively early date, consideration
will have to be given as to whether the value of any lump sum option and the amount of the periodic payments justifies the continuation in office of the trustee.

Each case will have to be treated on its merits but for general guidance it is suggested that where the value of the annuity is less than £1,000 per annum, consideration be given to reinvesting the policy in the debtor upon payment of an appropriate amount. Further, when the policy does not mature for some considerable time (say more than 10 years) consideration should be given to reinvesting in the debtor on payment of a suitable sum.

In accepting any sum for reinvestment a trustee should of course satisfy themselves as to the source of the payment and that it does not come from funds which should have vested in the trustee or from excess income which might have been the subject of a DCO under Sections 32(4A) or 32(2) of the Act.

When considering reinvesting in the debtor, it might be advisable for the trustee to consult the major creditors for their views, particularly if the value is substantial and if it is proposed to continue premium payments. The Accountant should be consulted in all Schedule 2 cases.

Finally, when a trustee elects to collect periodic payments, they should satisfy themselves that the debtor is still living before disbursing such funds since the entitlement will cease on the death of the debtor and the insurance company will seek to recover any payments made after the date of death.

6.19.4 Employee pension schemes operated by the debtor - The attention of trustees is drawn to the provisions of section 57C of the Social Security Pensions Act 1975 [as inserted by Schedule 4 of the Social Security Act 1990]. This section imposes a duty on an insolvency practitioner acting as trustee in bankruptcy to an individual or partnership and where the debtor operated a pension scheme for their employees, to ensure that at all times at least one of the trustees of the scheme is an independent person.

The section further provides that if there is no such independent trustee, the trustee in bankruptcy shall take steps to appoint or secure the appointment of an independent trustee.

6.19.5 Social Security Benefits and tax credits - No sum which a debtor has received as a Social Security benefit or tax credit can pass to their trustee. Trustees must take care to ensure that these funds are not collected. Section 187 of the Social Security Administration Act 1992, provides that any assignment of or charge on benefit and every agreement to assign or charge such benefit shall be void.

If a debtor is in receipt of solely benefits i.e. universal credit, no contribution can be taken from this amount.
On the bankruptcy of a beneficiary, such benefit shall not pass to any trustee or other person acting on behalf of their creditors. This principle was upheld by the House of Lords in Mulvey v. Secretary of State for Social Security on 13 March 1997.

The following list specifies Social Security benefits affected by this rule. This list is not exhaustive and benefits and benefit titles will change:

- Bereavement Allowance
- Bereavement Payment
- Best Start Grant
- Carers Allowance
- Carers Allowance Supplement
- Category A Retirement Pension (Including Additional Pension)
- Category B Retirement Pension
- Category C Retirement Pension
- Category D Retirement Pension
- Child Benefit
- Council Tax Benefit
- Disability Living Allowance or Personal Independence Payment
- Graduated Retirement Benefit
- Guardian’s Allowance
- Housing Benefit
- Incapacity Benefit
- Income Support
- Industrial Injuries Disablement Pension
- Invalid Care Allowance
- Jobseeker’s Allowance (Contribution-Based)
- Jobseeker’s Allowance (Income-Based)
- Employment and Support Allowance (ESA)
- Maternity Allowance
- Social Fund Payments
- State Pension Credit
- Widowed Parents Allowance

Benefit includes any increase of benefit for an adult or child dependant.

The same rules also apply to Tax Credits [Tax Credits Act 2002, section 45], the Social Security (Scotland) Act 2018, the Scottish Child Payment Regulations, also to teachers’ Superannuation Benefits [The Teachers’ Superannuation (Scotland) Regulations 2005, regulation E38], and payments made under the Victims Payment Regulations 2020.

The trustee must be satisfied that they will not be seeking a contribution from a Social Security benefit or Tax Credit, when making a request for a contribution to the debtor and/or the court.

6.20 Personal liability and rights of relief

6.20.1 Personal liability of trustees and rights of relief - Section 51(1) of the Act determines the order in which a trustee must allocate and distribute the
funds in the bankruptcy estate. The order is absolute, i.e. there is no scope for a pro-rata distribution of available funds except to creditors of the same class.

This means that a trustee is not entitled to recover any part of their remuneration and outlays under Section 51(1)(b) of the Act until the outlays and remuneration of the interim trustee (if appointed) under section 51(1)(a), as determined by The Accountant, have been satisfied in full. For this purpose any liability for statutory fees incurred by the interim trustee but paid out of public funds are deemed to be outlays of the interim trustee.

Both interim trustee and trustee are personally responsible for the liabilities they incur; however, an interim trustee has a right of relief against the trustee while a trustee has a right of relief against the sequestrated estate. Except for liabilities arising due to a fault or omission on the part of a trustee, this personal liability will be limited to the funds available or, in other words, by the extent to which they can actually obtain relief from the sequestrated estate.

Despite the interim trustee’s ‘first’ right of relief being against the trustee and that they have moreover an absolute priority claim over that of the trustee as regards any funds which come into the latter’s hands, this right of such relief is limited in the same way as that of the trustee, i.e. the interim trustee cannot do better than they would have had they themselves become trustee.

This hierarchy of liability and relief holds good so far as the personal expenses of interim trustee (if appointed) and trustees are concerned, i.e. they have a right to recover these but only in the order provided for in Sections 51(1)(a) and (b) of the Act and only to the extent that there are funds in the bankruptcy estate.

Satisfaction must therefore be deferred for the interim trustee until such time as the trustee has funds to meet the obligation at Section 51(1)(a) of the Act and for the trustee until they have fully satisfied the claims of the interim trustee.

As regards obligations which interim trustee or trustees incur towards third parties, there can be no deferment of liability; the supplier of a service is entitled to be paid for it forthwith by the person who contracted for that service and this principle applies no less to the statutory fees and charges due to The Accountant as prescribed in the Bankruptcy Fees (Scotland) Regulations, as amended.

Even if insufficient funds are realised into the sequestrated estate to allow the insolvency practitioner to obtain their right of relief under Section 51 of the Act, the insolvency practitioner is liable to pay for services provided by The Accountant in the same way that they are liable to pay for services rendered by any other party.
However, under certain limited circumstances The Accountant has advised that liability for fees may be delayed. See Section 6.20.3 of these Notes below.

This is a concession by The Accountant and not a statutory right. Insufficient funds in the sequestrated estate is not in itself sufficient reason for non-payment of fees properly due to The Accountant.

6.20.2 Undertakings of insolvency practitioners - Where an insolvency practitioner is appointed as trustee or to act as interim trustee, they must have agreed to undertake this duty, in writing, if no other insolvency practitioner is appointed, under Section 2(3)(c) or Section 2(5)(a) of the Act.

Where an insolvency practitioner is elected as a replacement trustee he must have given an undertaking to act under section 24(2)(e) of the Act.

These undertakings imply a recognition of, and an acceptance of liability to meet the obligations inherent in the respective offices.

6.20.3 Deferral of liability to pay The Accountant’s fee – If there are insufficient funds in the sequestrated estate to meet the trustee’s remuneration and outlays as determined by The Accountant, an insolvency practitioner may defer liability for audit fees by extending the accounting period, as provided for by Sections 52(2) and 52(2A) of the Act.

If extending the length of an accounting period is inappropriate, a trustee must lodge an account for the period in question but in this case may defer their claim for remuneration and by so doing also defer their liability to pay the statutory audit fee.

The deferred claim may be admitted and adjusted in a subsequent account in terms of Section 53(5) of the Act.

Should a trustee choose not to take advantage of the above concessions, a determination will be issued after the account has been audited and the audit fee will be immediately payable whether or not there are funds in the sequestrated estate.

Should a trustee defer their claim for remuneration, their liability to pay that part of the audit fee which relates to their remuneration is also deferred. The part of the audit fee which relates to the trustee’s outlays for the period, currently 17.5% of the outlays determined, cannot be deferred.

Where a trustee wishes to defer their claim for remuneration and thus liability to pay the statutory audit fee they must, when submitting Form B1(A) account for that period, give The Accountant a note of the remuneration they would have claimed had there been sufficient funds in
the sequestrated estate, whilst making it clear that a ‘nil’ determination is required.

An interim trustee’s account must be submitted within three months of the date of the trustee’s appointment, if the interim trustee is not appointed trustee.

If the interim trustee is appointed trustee, they may submit their interim trustee accounts along with their first trustee accounts, one year after appointment. Interim trustees can neither vary the length of the interim account period, nor delay lodgement of the account; neither can they defer their claim for remuneration. Audit fees for interim accounts are, therefore, always immediately payable by the interim trustee.

6.20.4 Liability for regulatory fees - The interim trustee will not be due to pay any statutory fees other than the audit fee. Any other statutory fees are due by the trustee.

6.20.5 Regulatory fees due at the close of bankruptcy - In the event that insufficient funds come into the bankruptcy, an insolvency practitioner may never receive the fees and outlays due to him as trustee.

The sheriff will determine who is responsible for payment of the interim trustee’s fees in the event that a creditor’s petition is rejected or the interim trustee is not appointed trustee on award of bankruptcy.

However, the statutory fees due to The Accountant, under the Bankruptcy Fees (Scotland) Regulations, as amended, must be paid. Trustees will not receive their certificates of discharge if any such fees remain outstanding.

Note: The trustee is not entitled to receive any remuneration or outlays until the fees and outlays of the interim trustee have been satisfied in full.

6.20.6 Statutory fees due to The Accountant for their functions as interim trustee –

In cases where The Accountant in Bankruptcy is interim trustee but not appointed trustee, any remuneration and outlays due to The Accountant as interim trustee will be paid firstly from the sequestrated estate and secondly, in the event of there being insufficient funds in the sequestrated estate, from public funds.

However, only if directed by the sheriff will the trustee be responsible for making payment to the interim trustee for their remuneration, and outstanding outlays determined to be due to them and recovery of any sums paid from public funds will be pursued from the trustee.

While the trustee has a right of relief from the sequestrated estate for these sums, and would in other circumstances be able to postpone payment until they had sufficient funds in the sequestrated estate, The Accountant’s fees,
once determined, are statutory fees under the Bankruptcy Fees (Scotland) Regulations, as amended and are immediately payable regardless of the state of funds in the sequestrated estate.

6.21 Reappointment of a trustee

6.21.1 Vesting of estate, post discharge of the trustee

This section applies to estate that would have vested in the trustee at the date of bankruptcy, but which is not discovered until the trustee has been discharged. This can include, for example, entitlement to compensation for mis-selling of PPI compensation, relating to the sale of a policy prior to bankruptcy and identification of a new property that was not dealt with during the bankruptcy. In accordance with Section 3 of the Act, it is a general function of a trustee (including The Accountant in Bankruptcy) to recover, manage and realise the debtor's estate and distribute the funds. etc.

There is nothing in the Act which states that the role of the trustee, in principle, ceases on their discharge. Section 58B states that The Accountant has the authority to reappoint a trustee on application of the trustee who was discharged or appoint a new trustee.

6.21.2 Claim to a particular asset

Section 31(1) of the 1985 Act states that the "whole of the estate of a debtor" vests - defined at Section 31(8) as: the estate as at the date of bankruptcy. There would have to be an asset or claim that would have vested at the date of bankruptcy, or during the period of bankruptcy. This will be the case where an entitlement to funds, or property, existed prior to, or during, the bankruptcy, and where the trustee did not know of the existence of the asset. In order for the re-appointment to proceed, the discharged trustee must act before the expiry of 5 years from the date of bankruptcy (Section 58B(1)).

6.21.3 Action on identification of estate

In order to ingather funds, or realise an asset, and distribute accordingly, it will be necessary for the trustee to seek their re-appointment to act. In considering whether to apply for their reappointment, the trustee must first consider the expected cost of the application action and the administration costs for ingathering the funds, or sale of asset, against any expected benefit to the debtor’s creditors

The trustee should only consider seeking their reappointment, if this action is expected to bring a benefit to the debtor’s creditors. If the action is deemed not to be cost effective and will not result in a dividend to creditors, the trustee should not seek their reappointment and the funds/assets will revert back to the debtor.
The newly identified assets must not have a value lower than £1,000. On application to The Accountant, who will take all information into consideration before deciding whether it would be cost effective to proceed with the reappointment or appointment of a trustee (section 58B(4) refers).

6.21.4 The Accountant must notify the debtor and other interested person where an application has been made and where The Accountant proposes to make an appointment or reappointment. The notice must state that the debtor or any other interested person may make representations to The Accountant within 14 days from the date on which the notice is given. The Accountant must take any representation made within 14 days into consideration before making a decision. If The Accountant makes a re-appointment then they must as soon as is practicable notify the debtor of the appointment or reappointment. The notice must include information in relation to the debtor’s duties to co-operate with the trustee.

6.21.5 Where The Accountant makes or refuses to make an order under section 58B, an interested person may, no later than 14 days after the date of the decision, appeal to the sheriff.

6.22 Recall Procedures

6.22.1 Section 16(1) of the Act allows a debtor, any creditor, any other person having an interest, the trustee or The Accountant to present a petition for recall of an award of bankruptcy to the sheriff under certain circumstances. See Section 6.22.2 of these Notes for details of applications for recall to The Accountant.

A petition for recall may not be presented to the sheriff if the only ground is that the debtor has paid or is able to pay their debts in full, unless sequestration was awarded following a petition of a qualified creditor/s and a petition includes the ground that the debtor was not apparently insolvent.

Section 16(2) of the Act requires the petitioner to serve notice upon the debtor, any person who was a petitioner (or concurred in the debtor application for the bankruptcy), the trustee and The Accountant. A copy of the petition should be served along with a notice stating that the recipient of the notice may lodge answers within 14 days of service. On service, The Accountant must enter particulars of the petition for recall in the Register of Insolvencies (RoI).

In the opinion of The Accountant, the trustee has a duty to the general body of creditors to consider and represent their interests and also, as an officer of the court, the trustee has a duty in that capacity to ensure that the court has all relevant information before it when it considers the petition.

For example, if the petition proceeds under Section 17(1)(a) of the Act, the debtor must have paid all their debts in full. Where the sheriff intends to recall an award of bankruptcy on the ground that the debtor has
paid their debts in full, the order may not be made before the payment in full of the outlays and remuneration of the interim trustee and the trustee, and may be subject to any conditions which are to be fulfilled before the order takes effect.

While under no statutory obligations to do so, the trustee may wish to consider whether they should advise the whole body of creditors of the circumstances and of their right to lodge answers individually if so advised. As well as their representative duty, the trustee may have a personal interest in lodging answers to safeguard their interests. In granting recall, the court is enjoined, in terms of section 17(3), to ‘make provision for the payment of the outlays and remuneration of the interim and any trustee etc.’ and the trustee may be advised to make known to the court their views on that matter to ensure that any order made is sufficient and appropriate to ensure that all parties’ interests are secured and provision is made by the court for payment of any unpaid creditors’ claims or fees.

The trustee should also be aware of the possible need to make representation to the court to ensure that the sheriff does not impose any responsibility upon them e.g. to make payments to creditors, the cost of which has not been secured prior to granting of the recall.

Trustees should note the decision of the Lord Ordinary’s in the case of Crawford’s Trustee V Crawford 2002 SLT 182.

This decision implies that trustees will need to ensure they hold sufficient funds in hand to meet their final determined outlays and remuneration. Failing this, a trustee should consider lodging answers to the petition for recall (even if they do not oppose to recall in principle).

He would do this to seek a specific order from the court imposing personal liability on the debtor or someone else for any balance of their outlays and remuneration not so met, or to make some alternative secure provision for this situation such as obtaining an appropriate undertaking from the debtor or someone else which can be separately enforced.

Debtors seeking recall of bankruptcy should be advised that trustees might make demands of this nature to protect their position.

The Accountant recommends that the debtor be directed to or provided with a copy of the help booklet Debtors’ Guide, issued by the Accountant in Bankruptcy, at the earliest opportunity.

6.22.2 Recall

Section 17A of the Act allows a debtor, any creditor, any other person having an interest or the trustee to make an application for recall of an
award of bankruptcy to The Accountant. The application may only be made on the ground that the debtor has paid or is able to pay their debts in full.

The person making an application must, at the same time as applying to The Accountant, give to the debtor, the trustee and any person who was a petitioner for, or concurred in a debtor application for, the bankruptcy a copy of the application and a notice informing the recipient of their right to make representations to the Accountant in relation to the application before the expiry of the period of 21 days beginning with the day on which the notice is given.

Where the application is made by the trustee, they must notify every known creditor within 7 days of the application being made, and where the application is made by another person, within 7 days of notice being given.

If the notice to creditors is not issued within the prescribed statutory time period, the trustee must obtain an order from the Accountant, in accordance with Section 63A of the Act, waiving the failure to comply with the seven day time period, before they issue the notice to creditors.

The trustee must prepare and submit to the Accountant a statement on the debtor’s affairs at the same time as they make the application under section 17A, or where the application is made by another person, before the expiry of the period of 21 days beginning with the day on which the notice is given.

The statement must declare whether the debtor has agreed to the interim and permanent trustees’ claims for outlays and remuneration (incurred and yet to be incurred), the Accountant will not accept the statement if this is not included. It must also provide details of any distribution of the debtor’s estate and state whether or not the debtor’s debts have been paid in full. Trustees should also be aware that statutory interest is not considered to form part of the debts that the debtor must pay as a condition of recall. Therefore, statutory interest should not be included in the total amount of the debtor’s debts that the debtor must pay if recall is to be granted.

Where the debts have not been paid the statement must provide details of any debt which has not been paid and indicate whether, in the opinion of the trustee, the debtor’s assets are likely to be sufficient to pay the debts in full within 8 weeks of the statement being submitted.

The trustee should also provide a creditor list detailing the names, addresses and reference numbers with the statement.

If the trustee does not submit an acceptable statement within the prescribed 21 day time period, the trustee must obtain an order from the Accountant, in accordance with Section 63A of the Act, waiving the failure to comply with the 21 day time period, before they submit their statement.
6.22.3 Where The Accountant receives an application under section 17A, and the statement submitted by the trustee under section 17B indicates that the amount of the outlays and remuneration of the trustee is not agreed, the trustee must provide at the same time as submitting the statement under section 17B – the trustee’s accounts of the trustee’s intromissions with the debtor’s estate for audit, and details of the trustee’s claim for outlays reasonably incurred and for remuneration for work reasonably undertaken by the trustee; invoices in support of those outlays, detailed timesheets, the trustee’s case and correspondence files and any other information The Accountant should be made aware of.

Trustees should ensure that any contingency fees and outlays recorded in the accounts, for example, for distribution of funds and case closure action, can be justified, and that an explanation and calculation of the amount(s) claimed are submitted with the accounts.

The debtor should be advised that when the trustee’s fees and outlays are not agreed and will be determined by the Accountant, the 17.5% determination fee will be charged and must be paid by the debtor as an outlay of the bankruptcy before recall can be granted.

If the trustee, or debtor, wishes the expenses of the petitioning creditor to be determined by the Accountant, this should be requested at the same time as the trustee’s accounts are submitted for audit and evidence in support of the expenses provided, in accordance with section 53 of the Act.

The Accountant must, before the expiry of 28 days from the expiry period mentioned in section 17B(8), issue a determination fixing the amount of the outlays and remuneration payable to the trustee. Before the expiry of 28 days The Accountant may determine the expenses reasonably incurred by a petitioning creditor or a creditor who concurred in a debtor application for bankruptcy. Subsections (4) and (5) of Section 53 of the Act apply to The Accountant or any commissioners for the purpose of fixing an amount under that section.

6.22.4 The Accountant may grant recall if they are satisfied that in all the circumstances it is appropriate to do so, and the trustee has notified The Accountant in the statement submitted under section 17B(3) that the debtor’s debts have been paid in full (including the trustee’s/interim trustee’s outlays and remuneration). Recall may be granted by The Accountant only within the 8 weeks after the day on which the statement was first submitted, and where no appeal is made under section 17G(5)(a). Where such an appeal is made The Accountant may only grant recall within 14 days of the day on which the appeal is finally determined or abandoned.

If The Accountant does not grant recall then the bankruptcy is to continue but is to be subject to such conditions as The Accountant thinks fit. The Accountant may, at any time before deciding under section 17D(1) whether to grant recall, remit to the sheriff an application under section 17A.
6.22.5 The effect of recall is, so far as practicable, to restore the debtor and any other person affected by the bankruptcy to the position the debtor or, as the case may be, the other person would have been in if the bankruptcy had not been awarded. A recall is not to affect the interruption of prescription caused by –

- the presentation of the petition for sequestration,
- the making of the debtor application, or
- the submission of a claim under section 22 or 48
- invalidate any transaction entered into before such recall by the interim trustee, or trustee, with a person acting in good faith, or
- affect a BRO which has not been annulled under section 56J(1)(a).

6.22.6 In accordance with section 17G(2) A debtor, creditor, trustee or any interested person may apply to The Accountant for a review of a decision made by The Accountant under sections 17D (1) or 17E(6) to grant or refuse a recall of bankruptcy. An application must be received before the expiry of 14 days from the date the decision was made by The Accountant. The Accountant must take into consideration any representations made by those mentioned in subsection (2) before the expiry of 21 days from the date the application was made and confirm, revoke or amend the decision, determination or requirement before the expiry of 28 days from the date the application was made.

A person mentioned in subsection (2) may, before the expiry of 14 days from the date the decision, determination or requirement is made, appeal to the sheriff against the determination of The Accountant under section 17C(3) or 17E(5)(b) or (4)(b). The sheriff’s decision is final.

6.23 Recovery of VAT

Inland Revenue and Customs advised of a change in policy in relation to the processing of all VAT 426 claims. They advise that where the debtor was registered for VAT, but de-registered prior to the date of bankruptcy then any VAT due on the supply of services made after the date of de-registration cannot be claimed by virtue of Regulation 111(3) of the VAT General Regulations because the requirements of Section 24(6) are not met. If the trustee de-registers after bankruptcy, however, the VAT charged on the trustee’s own fees and outlays are fully recoverable.

6.24 Redundancy payment and other compensation payments

6.24.1 Where a debtor is made redundant and receives a severance payment from their employer, prior to, or post, bankruptcy, the question arises as to whether this payment, or part of it, vests in the trustee under Section 32(6) of the Act.
This question was considered in an application by Patrick McGrail under section 31(6) of the Act (Sheriff Murphy, Glasgow Sheriff Court, 10 August 1990). The sheriff did not issue a written judgement but The Accountant understands the facts of the case to be as follows.

During the relevant period, as defined by Section 32(10) of the Act, Mr McGrail was made redundant and received a severance payment of £5,050.

This sum was made up of four elements:

- Statutory redundancy payment £  810
- Payment in lieu of notice £  810
- Company ex gratia payment £1,000
- Additional payment based on years of service & wages £2,430

£5,050

The trustee conceded the payment in lieu of notice was income but claimed the remaining £4,240 as acquirenda.

This approach was later approved by the sheriff. The debtor disputed this approach and applied to the sheriff that this amount be excluded from vesting in the trustee, under Section 31(6) of the Act.

After hearing the solicitor for the debtor and for the trustee, the sheriff held that:

- the statutory redundancy payment of £810 fell to be regarded as alimentary in nature and therefore as income which did not vest in the trustee;
- the other payments made by the company which were voluntary did vest in the trustee.

When dealing with payments made on redundancy, it will be necessary for trustees to identify that part which represents the debtor’s statutory entitlement and care will be required in those cases, such as McGrail, where it is company policy to pay an enhanced sum. In some cases such an enhanced sum might be loosely termed the ‘redundancy payment’.

In summary, the various elements of payment which can be received on redundancy should be treated as follows:

- Statutory Pay in lieu of Notice (PILON) Income
- Enhanced or voluntary PILON Acquirenda vested in the trustee
- Statutory redundancy pay Income
- Enhanced or voluntary redundancy pay Acquirenda vested in the trustee
- Other ex-gratia payments Acquirenda vested in the trustee
Once a debtor has received their statutory redundancy payment, the trustee should assess whether a contribution or increased contribution is payable in relation to the income elements using the Common Financial Tool (CFT).

When applying the CFT to determine if a contribution can be paid, trustees should attribute the amount of identified PILON income received in a redundancy severance payment across the period it was paid for. e.g. a payment in lieu of three months’ notice should be dividend across three months, when recording the debtor’s monthly income. Statutory redundancy pay should be assessed in the period in which it is received.

In this regard, the trustee should bear in mind that receipt of a redundancy payment does not immediately debar the debtor from receiving unemployment benefit under Section 20(3A) of the Social Security Act 1975.

6.24.2 Criminal Injuries Compensation - It is provided in Section 7(2) of the *Criminal Injuries Compensation Act 1995* (replacing earlier provisions in Section 117 of the Criminal Justice Act 1988, now repealed, that an award made under the Criminal Injuries Compensation Scheme to a debtor shall not vest in the trustee.

It should be noted that the statutory scheme giving effect to this provision came into effect on 1 April 1996.

Awards resulting from claims made before 1 April 1996 are not covered by the Scheme; such awards do therefore still vest in the trustee as *acquirenda* in terms of Section 32(6) of the Act.

This is of course without prejudice to the debtor’s right to apply to the sheriff under Section 31(6) of the Act, for an order exempting the award from vesting in the trustee.

Despite awards made in respect of claims made under this Scheme vesting in the debtor, it is open to a trustee to arrange a DCO in terms of Sections 32(4A) and 32(2) of the Act.

6.25 Suspected Offences

In terms of Section 3(3) of the Act, trustees are required to report to The Accountant, using the Form at Appendix J2, where they have reasonable grounds to suspect an offence has been committed by a debtor, or by anyone else in their dealings with the debtor.

6.25.1 The Accountant will consider all suspected offence reports against guidelines provided by the Crown Office and the police. Where they are satisfied that there are both reasonable grounds to suspect an offence has been committed and that the information provided in the suspected offence
report conforms to the Guidance provided, the report will be forwarded to the Crown Office for investigation and possible prosecution action.

A list of typical offences is also included at Appendix J1

The Crown Office and police have asked that, before submitting a report to them, The Accountant considers the following criteria:-

- that sufficient evidence has been enclosed with the report to merit investigation by the police;
- that all courses of civil action have been exhausted;
- that prosecution of the debtor (or any other person) will have a significant impact on the administration of the bankruptcy.

6.25.2 The police have provided ‘Suggested Minimum Standards of Enquiry’ to assist trustees, The Accountant and its agents/providers when considering whether they have reasonable grounds to suspect an offence. These Minimum Standards are included at Appendix J3 to these Notes.

The Accountant requests that trustees should also consider the foregoing criteria and the Minimum Standards when deciding whether they have reasonable grounds to suspect an offence has been committed and therefore whether a report should be submitted.

There will obviously be exceptions to this rule. For example, any suspicion of serious offences must be submitted without delay to The Accountant for consideration.

6.25.3 Trustees should also note the following:-

It is not deemed acceptable to assume there are reasonable grounds for a suspected offence report if the trustee cannot provide evidence that the debtor is aware of their legal obligations, or that they are aware of the implications of failing to comply with their obligations. As soon as a debtor fails to co-operate they must be informed of the potential consequences of their actions and of what action may follow.

If there are no reasonable grounds to suspect an offence has been committed, a report is not appropriate under Section 3(3) of the Act.

A suspected offence report should not be submitted if the whereabouts of the debtor have not been confirmed.

A suspected offence report should not be submitted as a means to secure the debtor’s co-operation. There are alternative civil routes to obtain co-operation or information.
When a debtor is not co-operating, The Accountant requests that documents are, at some stage, **personally** served on the debtor. Handing documents to a person other than the debtor or leaving at an address where they are believed to reside is not personal service. This may require more than one visit by Sheriff Officers. Failure to effect personal service means a debtor can later deny receipt of documents or correspondence, even where these were handed to another member of their household or posted through their letterbox. Information that a suspected offence report has been submitted should not be disclosed to a debtor. However, a debtor must have been informed that misconduct or failure to co-operate may result in an offence being reported to the Crown Office, prior to a report being made.

If there is any change to a debtor’s circumstances that may impact on a submitted suspected offence report, this must be reported to The Accountant with a recommendation as to what action should be taken in respect of the suspected offence report.

The Accountant will liaise with the Crown Office.

When there is a potential criminal offence by the debtor, it is essential that all matters are pursued and reported promptly. When considering an offence report, the Crown Office must have regard to the implications of the European Convention of Human Rights (ECHR). In terms of Article 6, the question of ‘within a reasonable time’ is paramount.

The date from which ‘unreasonable delay’ is considered is the date on which it became known to the potential accused that they may well be the subject of a criminal prosecution. What is described in ECHR case law as a ‘period of inactivity’ is likely to result in the Crown Office not pursuing a case.

An example of a ‘period of inactivity’ is when a trustee took no action to pursue a debtor for a period of eight months after they had failed to comply with the trustee’s instruction.

6.25.4 The trustee should note that, following submission of a Suspected Offence Report, The Accountant, or the police, may request:

- a statement from the trustee and/or their staff, regarding the circumstances leading up to the submission of the suspected offence report;
- original, or copies, of documents that support, or evidence, the suspected offence;

6.25.5 In the event of a successful prosecution, the sentence passed on the debtor is at the discretion of the court. However, the procurator fiscal may wish additional information regarding the case which may be used to influence the sentence imposed.
Information that would be useful may include:-

- whether the offence is a technical one;
- whether there is any criminal element involved;
- whether the debtor is now co-operating with the trustee;
- whether there has been any quantifiable loss to creditors for which a compensation order might be the most appropriate disposal for the case. Quantifiable loss to the estate should be recorded in Part III of the suspected offence report.

The Accountant will monitor the outcomes of suspected offence reports and may issue press releases to give publicity to successful prosecutions. Information regarding successful prosecutions may also be placed on The Accountant’s website.

In this way, it is hoped that these reports may act as deterrents to future potential offenders. Reference in general terms to successful prosecutions can be used in letters to debtors when notifying them that they may be committing an offence.

6.26 Searches of the property registers

Following correspondence with the Keeper of the Registers some clarification of the policy and practicality of searches is necessary. Firstly, concerning the Land Register, the index of past or superseded properties has been discontinued. The Keeper has no statutory obligation to retain such information or to make it available and apparently the costs of doing so are prohibitive. Searches of the Land Register will therefore only reveal properties presently owned by the debtor and not properties which they may have conveyed to other parties.

Only if a trustee has reason to believe that the debtor may have conveyed property to another, e.g. to their spouse, should he instruct a search against the name of the person(s) to whom the property might have been conveyed and against the property itself.

As regards the Sasines Register, full indices of past and present owners are maintained, although these are organised in 32 counties (pre-regionalisation making a blanket search impracticable).

Requests for searches should therefore be confined to the county or counties in which the trustee has reason to believe the debtor may have property, or have had property during the relevant period.
6.27 Bankruptcy of practising solicitors

Practitioners who are appointed or elected, in succession to a judicial factor, as trustee on the estate of a practising solicitor, should be aware of the terms of the Inner House Opinion on a report by The Accountant of Court in the case of I.J.W. McKinnie.

The effect of the judgement is that:

- funds held on behalf of the clients of the solicitor are ‘trust funds’ which do not, in the event of bankruptcy, vest in the trustee who accordingly has no title to receive or intromit with such funds. Section 33(1)(b) of the Act;

- the judicial factor is entitled to and should apportion their costs appropriately and charge their expenses proportionately to both the client and the general funds of the estate; and,

- what vests in the trustee in a bankruptcy which follows upon a judicial factory, is not the debtor’s whole estate as it stands at the date of bankruptcy, but only a right to an accounting from the judicial factor for the general funds remaining after the appropriate proportion of the factors remuneration and outlays has been determined and met from that general estate.

Despite these conclusions, the leading Opinion (of Lord Penrose) allowed:

- that a trustee might still competently take on the administration of the estate, including the realisation of the work in progress, subject to their acceptance and recognition of the judicial factor’s prior rights.

This is a matter for the trustee, but it is The Accountant’s opinion that the most prudent course is to decline to accept the estate or to assume its administration until the judicial factor is in a position to provide a final accounting in respect of their own intromissions and costs, and to convey any remaining assets without reservation.

In all bankruptcies involving practising solicitors, including those where there was no preceding judicial factory, trustees should observe the principle now established that costs should be appropriately apportioned between the client and general funds.

6.28 Student Loans

The Bankruptcy and Diligence etc. (Scotland) Act 2007 (the 2007 Act) made changes to the way student loans are processed in bankruptcy.
Prior to 1 April 2008, a student loan was considered to be a normal debt in bankruptcy.

The loan could be included in the list of liabilities and the Student Loans Company was invited to make a claim in the bankruptcy. After discharge, the Student Loans Company would receive a dividend, if available, and could not pursue the remaining debt.

Changes introduced by the 2007 Act were designed to bring bankruptcy law in Scotland in line with student loan policy in England & Wales in order that a student loan would not be written off through bankruptcy in Scotland.

The 2007 Act amended the Education (Student Loans) Act 1990 and the Education (Scotland) Act 1980 as student loans are provided under different legislation, depending on when the loan was issued.

6.28.1 Loans provided under the Education (Student Loans) Act 1990 as now amended by the 2007 Act - Section 34 of the 2007 Act commenced on 1 April 2008 and amended paragraph 6 of Schedule 2 to the Education (Student Loans) Act 1990 that stated a student loan is not considered as an asset or a debt in bankruptcy.

Section 34 of the 2007 Act amendment means that loans granted under the 1990 Act are no longer discharged once the bankruptcy ends.

These loans are commonly known as 'mortgage style' loans (taken out before 1998) and are repaid, normally by direct debit over 36 or 60 months, once the ex-student is earning the average wage. This is also called the deferment threshold, which from 1 September 2010, is £26,449.

Section 34 of the 2007 Act means:

If the debtor is made bankrupt after 1 April 2008 and has a student loan granted under The Education (Student Loans) Act 1990 (that is a mortgage style loan), the loan is not discharged at the end of a bankruptcy.

However, the debtor would still have to make their monthly payment towards their loan if they are earning above the threshold.

If the debtor is in arrears with their payments to the Student Loans Company, the collection of the arrears will be deferred until the debtor is discharged or once their DCO is completed.

6.28.2 Loans provided under the Education (Scotland) Act 1980 as now amended by the 2007 Act - Section 73B of the Education (Scotland) Act 1980 was also amended by the 2007 Act to introduce regulations to ensure that loans under the 1980 Act are also not discharged.
These loans are commonly known as an ‘income contingent’ loans (which have been taken out after 1998).

The Education (Treatment of Student Loans on Sequestration) (Scotland) Regulations 2010 (2010 No. 300) came into force on 27th September 2010, to provide that loans under the 1980 Act are not discharged.

This means:

If the debtor is made bankrupt on or after 27th September 2010 and has a student loan granted under the Education (Scotland) Act 1980 (i.e. income contingent loan) the debtor will not be discharged from the liability to repay the loan.

However, there is one exception to this ruling:

If the loan was for the purposes of paying the Graduate Endowment, then this loan will still be discharged.

6.28.3 General Information - Where the debtor is made bankrupt prior to 1 April 2008 (mortgage style loans), or 27 September 2010 (income contingent style loans), and the loan is to be discharged, the Student Loans Company will submit a claim. This will include any arrears due by the debtor. The Student Loans Company must cease to collect any contributions from the date the debtor is made bankrupt.

If further contributions are collected after this date, the trustee may request that these are paid back to the debtor.

If a Debtor Contribution Order (DCO) has been obtained the arrears can be paid direct to the trustee as a contribution to the bankruptcy.

Please note that the guidance above regarding student loans only refers to bankruptcy and not to Protected Trust Deeds (PTDs). For student loans in PTDs please see section 8.4 of the Notes for Guidance for Trustees under PTDs.

6.29 Trustee’s liability for income tax

Bankruptcy funds must be lodged in an interest-bearing account and, unless the interest is credited net of tax, the trustee will be liable to make an annual return to the Inland Revenue in respect of interest earned. The funds which give rise to the interest are vested in the trustee and are therefore sufficient to make a single or composite annual tax return in respect of interest earned on all funds banked in the name of the trustee to the tax district for the trustee’s office, i.e. it is not necessary to make individual tax returns to the tax district office appropriate to the debtor. Trustees are however advised to confirm this advice with their
Trustee’s own records of the bankruptcy

6.30.1 The sederunt book - In terms of Section 3(1)(e) of the Act, the trustee is required to maintain a sederunt book being the official permanent record of the bankruptcy process.

A list of the documents which must be inserted in the sederunt book can be found at Appendix D.

The trustee is, in terms of Section 62(1) of the Act, required to make the sederunt book available for inspection at all reasonable hours by any interested person following a request under section 62(2).

In terms of Section 57(1) of the Act, when they have concluded their administration, the trustee is required to send the sederunt book in an electronic version to The Accountant for examination.

The Accountant will only retain the sederunt book for six months and then it will be destroyed. It is for the trustee to retain all records for the period specified in the Insolvency Practitioners Regulations 2005.

6.30.2 The trustee’s correspondence files etc. The maintenance of records by insolvency practitioners is regulated by Part 4 of the Insolvency Practitioners Regulations 2005 (SI 2005/524).

Note: In terms of Section 3(1)(g) of the Act, an interim trustee or trustee, whether or not they are still acting, is required to provide The Accountant with such information as required.

That obligation includes providing The Accountant with any document or copy of a document and forwarding the sederunt book to The Accountant whenever required.

Unrealisable assets vested in trustee

6.31.1 Heritable assets - There is a difficulty regarding heritable property vesting in the trustee but which the trustee is unable to realise for one reason or another, perhaps because there is no present equity or because the sheriff has refused to grant authority to sell in terms of section 40 or has refused to grant decree in an action for division and sale.

6.31.2 Property with equity - If there is clear equity in the property, the trustee can, in terms of Section 14(4) of the Act, renew the entry in the Register of Inhibitions by sending the appropriate memorandum to the Keeper of the Registers at 3-yearly intervals until such time as they are able to realise their interest.
The trustee must remain aware of the requirement to undertake prompt action on the family home if it is their wish to realise equity in their property. See Section 6.11.2 of these Notes.

The Accountant will not grant a certificate of discharge to a trustee who remains vested in estate of potential substantial value.

Since the trustee must remain in office they must make such continuing arrangements as are necessary to safeguard their interests in the property and prevent the family home reinvesting in the debtor.

The Accountant’s advice is that the trustee should not normally rely on renewing the inhibition at 3-yearly intervals and that on every occasion he does so, they should write also to the debtor and the other interested party or parties advising them of the action taken and the implications and indicating willingness to consider an offer for the equity according to the current valuation or to arrange an open market sale by agreement.

If the barrier to sale is the result of a sheriff’s refusal of consent, the trustee should consider whether there has been any change in the situation which would justify the making of a renewed application to the court.

Trustees adopting this course are also advised that if they fail to renew the inhibition and for this or any other reason the value of the property should be lost to the bankruptcy estate, the trustee may be held personally accountable and liable for such loss.

Trustees may, if they prefer, adopt the safer option of making up notice of title to the property. However, anyone adopting this course should be aware of the possibility that they may incur personal liability for any burdens falling on the property. The trustee would have a right of relief against the sequestrated estate but it is not certain that any personal liability would be limited to the value of that estate.

Trustees who nevertheless adopt this course, should also notify the debtor (and the other interested party or parties) of the intended action and of its potential consequences should they wish to enter into any transaction involving the property at any future time.

If, having taken notice of title, the trustee should for any reason be unable to act, it would be necessary for a court to appoint a new trustee and assign the notice of title to the new trustee. This process is likely to be expensive.

If a trustee (other than The Accountant in Bankruptcy) takes notice of title on a property containing tenants paying rent, the trustee must be aware of
their requirement to register as a landlord with the appropriate Local Authority, in accordance with Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

6.31.3 Property without equity - In some cases the property may not be sold because there is no present equity. In these circumstances, if the trustee does not expect this situation to change in the immediate future, the trustee should attempt to reach an agreement with the debtor whereby the trustee would formally abandon their interest in the property upon payment of a nominal sum sufficient to cover the trustee’s costs in relation to the property and its disposition.

The amount of the sum is a matter for the trustee but in order to cover costs, which will include the fee to Registers of Scotland for the recording of a Letter of Abandonment, The Accountant will not normally agree to a sum less than £550.00 and moreover, will not agree to any arrangement which results in a further charge to public funds.

If no agreement is possible, the trustee may abandon their interest in the property and apply for their discharge which will not be withheld on this ground.

6.31.4 If the trustee proposes to sell a property with no equity on behalf of the secured lender see section 6.11 of these Notes.

6.31.5 Non-heritable assets - Similar considerations apply to other currently unrealisable interests such as private pension plans, fixed term investments, endowment policies etc. In such cases, as with unrealised heritable property, no certificate of discharge will be granted while there remain unrealised assets and despite having taken appropriate steps to safeguard their interest, the trustee should also:

- remind the debtor that this interest remains vested in the trustee;

  and

- in advance of the earliest possible payment date, remind the holder of the asset of the trustee’s right to it.

6.32 Withdrawal of funds by debtor after bankruptcy - liability of bank

In accordance with Section 32(5A) of the Act, where a trustee knows, or becomes aware, of any estate vested in the trustee which comprises funds held by a bank, the trustee must serve a notice on the bank informing the bank of the bankruptcy, specifying reasonable detail in order to allow the bank to identify the debtor and the funds held. The notice must be in writing and may be sent by first class post or by using recorded delivery or in some other manner (including electronic means) which the trustee reasonably considers likely to cause it to be delivered to the bank on the
same or next day. The notice is deemed to have been received the day after it is sent.

The trustee is not entitled to any remedy against a bank in respect of a banking transaction entered into before the receipt by the bank of the notice mentioned in section 32(5A) (whether or not the bank is aware of the bankruptcy).

Bankruptcies dated on or after 15 November 2010, are advertised in the Register of Insolvencies and can be freely accessed by any interested person via The Accountant’s website.

If a debtor withdraws significant funds from their bank account post-bankruptcy, the trustee must establish, before considering any action to seek recovery of the funds from the bank, if the bank should have been aware of the bankruptcy prior to the debtor withdrawing the funds (the notice mentioned in Section 32(5A) sent to the bank).

6.33 Power To Cure Defects

A sheriff may make an order to waive a failure to comply with a requirement of the Act or Regulations only where the failure relates to:

- a document to be lodged with the sheriff;
- a document issued by the sheriff;
- a time limit specified in relation to proceedings before the sheriff or a document related to those proceedings.

The Accountant may make an order to waive a failure to:

- correct a clerical or incidental error in a document required by or under the Act;
- waive a failure to comply with a time limit;
- which is specified by or under the Act;
- for which no provision is made by or under the Act.

6.34.1 Application To Court

An application to court must be made on a Form 5 of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008.

Any further information regarding the process should be made to the relevant sheriff court.
6.34.2 Application To The Accountant

This role is undertaken by the Adjudication and Supervision Team (AST) on behalf of the Accountant.

An application can be made by any person having an interest in the bankruptcy.

Applications to cure a defect in procedure can be made to correct a:

- failure to submit a request for an extension to an accounting period under section 52(2)(b) of the Act prior to the end of the accounting period
- failure to submit accounts under section 26(2) of the Act, within 3 months by the original trustee upon election of a replacement trustee
- failure to submit a proposal under section 32(2) of the Act, within 6 weeks from date of award for AiB to fix a Debtor Contribution Order
- failure to submit accounts under section 53(1) of the Act within 2 weeks of the end of the accounting period
- failure to submit a deferral of discharge under section 54D(3) of the Act later than 10 months after the date of award
- failure to submit the required Statement of a Debtor’s Affairs following a Recall Application to the Accountant within the prescribed 21 days, under Section 17B(3)(b) of the Act
- failure to apply to AiB to be appointed trustee within 14 days of a creditors meeting, under section 28(5)(a)
- a typographical error in a statutory document submitted to the Accountant or the debtor

This list is not exhaustive.

6.34.3 Application Process To The Accountant

An application can be created on BASYS or on a Form 1 of the Applications and Decisions Regulations. See BASYS User Guide - Adjudication and Supervision.
Where a trustee wishes to claim the application costs to be allowed as an expense of the bankruptcy, they must include this in the application and provide:

- an explanation why they believe it is appropriate for the costs to be paid as an expense;

and

- if the application is required due to non-cooperation by the debtor, information about the actions taken to try and obtain the debtor’s cooperation.

When the application is submitted it should be intimated to:

- the debtor;
- all known creditors;

advising of their providing details of their right to make representations to AST within 14 days of the notification on a Form 1 of the Applications and Decisions Regulations.

6.34.4 Actions of AST

AST will consider:

- the application;

- were the interested parties notified at the required time;

- where further information was required, was it received within the set timescales, and sufficient to proceed;

- has the applicant requested the cost of the application be an expense of the estate;

- where the above request has been made is it appropriate to allow the costs;

- has the applicant provided a reasonable explanation for not meeting the requirement of the Act;

- any representations received been made within the correct timescale will been given full consideration?

6.34.5 Actions Of The Accountant

The Accountant will make a decision to:

- grant the order;
• grant the order with any necessary amendments;
• refuse the order;
• grant expenses, if requested and appropriate;
• refuse expenses, if requested and not appropriate.

AST will:

• issue the Notice to:
  ➢ the applicant;
  ➢ the trustee (if not the applicant);
  ➢ the debtor (if not the applicant);
  ➢ all known creditors (if not the applicant);
  ➢ if appropriate, The Keeper of the Register of Inhibitions and Adjudications

• place a copy in the electronic Sederunt Book;

• where expenses are not requested the Notice will state that they cannot be claimed as an expense of the estate. The decision to refuse expenses cannot be reviewed or appealed.

• issue an invoice to the applicant. The fee to be applied can be found in The Fees Order.
PART 7

COMMISSIONERS

7.1 General Function of Commissioners

The commissioners are a representative body of the creditors. They are elected by the general body of the creditors to advise and supervise the trustee in their management of the estate. They have no power to deal directly with or transact with the estate and they are expressly barred from purchasing any part of the debtor’s estate.

The general functions of the commissioners are to supervise the intromissions of the trustee with the bankruptcy estate and to advise him. In terms of Section 39(1) of the Act, the trustee must consult with and have regard to any advice offered to him by the commissioners regarding their recovery, management and realisation of the estate. He need not however follow such advice if, for example, they consider it to be counter to the better interests of the general body of creditors. In such cases the commissioners, if so inclined, can nevertheless seek to secure the trustee’s compliance through an application to the court in terms of Section 39(1)(b) of the Act.

7.2 Election of commissioners

Commissioners are normally elected at the statutory meeting of creditors. No more than five commissioners may act at any one time, but, if fewer than that number are elected, additional commissioners, within the limit of five, may be elected at any subsequent meeting of creditors called in terms of paragraphs 1 or 3 of Schedule 6 to the Act. Such a meeting may also elect commissioners to replace any commissioner who has resigned or been removed from office or is otherwise unable to act.

The persons who may act as commissioners are:

- any creditor of the debtor whose claim has been accepted by the interim trustee at the statutory meeting or by the trustee at any other meeting of creditors, or;

- any mandatory of such a creditor.

Certain persons are disqualified from acting as commissioners including:

- the debtor;

- a person who is an associate of the debtor or of the trustee. The term ‘associate’ is prescribed by section 74 of the Act and includes any relation by blood or marriage of the debtor;
any business partner of the debtor and any employee; or,

any person who holds an interest opposed to the general interests of the creditors.

7.3 Resignation or removal of commissioners

If a commissioner ceases to have an interest in the bankruptcy, e.g. if their debt is settled out with the bankruptcy, or if their mandate to act on behalf of a creditor is recalled, they may no longer act as a commissioner and must intimate the fact to the trustee. A commissioner may resign office at any time. A commissioner may be removed from office by the creditors at a meeting called for that purpose or by order of a Sheriff if the Sheriff is satisfied that the commissioner is no longer acting in the interests of the efficient conduct of the bankruptcy. Such an order may be made on the application of The Accountant, a person representing not less than one quarter in value of the creditors or the trustee. The Sheriff will order an application to be served on the commissioner and intimated to every creditor who has given a mandate to the commissioner. The Sheriff will give the commissioner the opportunity to make representations before making a decision on whether to make an order to have him removed. The Sheriff may, in ordering the removal of the commissioner from office, make such further order as the Sheriff sees fit or may, instead of removing the commissioner from office, make such other order as the Sheriff sees fit.

The trustee, The Accountant, any commissioner or any creditor may appeal against the decision of the Sheriff within 14 days after the date of that decision.

It is a specific duty of The Accountant to supervise the performance by commissioners of the duties conferred upon them by law and to report any failure in such duty to the court.

7.4 The nature of the office of commissioner

The office of commissioner is entirely gratuitous and not even out of pocket expenses incurred can be recovered from the bankruptcy estate. Attention is specially drawn to the fact that where a commissioner also acts as solicitor for the trustee, they are not entitled to charge a fee for such legal services. They are entitled to recover their legal outlays only. It was decided in the case of Geddes' Trustee [6 April 1985 (n.r.)] that all of the professional charges of the solicitor during the period where they also acted as commissioner were disallowed.

The Accountant acts upon this court decision and will hold the trustee personally liable to make good to the estate a sum equal to the amount of fees paid to any such commissioner.
This rule is also applied where the commissioner's firm or any partner thereof acts as solicitor to the trustee.

7.5 Discretionary powers of commissioners

Commissioners are given specific discretionary powers in the exercise of their functions. The following list is not exhaustive, but the undernoted are most likely to be invoked by commissioners in matters arising in the administration of a normal bankruptcy.

The attention of the commissioners is directed to the terms of the Act for other discretionary powers and The Accountant will be pleased to advise commissioners on any matter included in or omitted from these Notes.

Commissioners may, in terms of The Bankruptcy (Scotland) Act 1985:

Section 3(1)(f): inspect the trustee's accounts at all reasonable times;

Section 3(2): offer advice to the trustee in the performance of their functions;

Section 39(1)(b): apply to the sheriff for directions to be given to the trustee;

Section 45(1): require the trustee to apply to the sheriff for an order bringing the debtor or any relevant person before the sheriff for public examination;

Section 52(2): consent to the trustee varying the duration of accounting periods;

Section 52(4)(b): authorise the trustee to pay the preferred debts at any time;

Section 52(5): consent to the postponement of payment of a dividend to the ordinary creditors until the next accounting period;

Section 53(2A): dispense with taxation of a legal account;

Section 65(1)(a): consent to the trustee referring to arbitration any claim or question of whatever nature which may arise in the course of the bankruptcy;
Section 65(1)(b): consent to the trustee compromising any claim of whatever nature made against or on behalf of the sequestrated estate;

Sched 6, para 17: require the trustee to call a meeting of commissioners; and,

Sched 6, para 18: call a meeting of commissioners themselves if the trustee fails to do so within 14 days of a request being made to him by a commissioner for such a meeting.

7.6 Meetings of commissioners

The quorum at any meeting of commissioners is one commissioner, and commissioners may act by a majority of their number present at a meeting. Any matter may be agreed by the commissioners without holding a meeting provided such agreement is unanimous and is subsequently recorded in a minute signed by all of the commissioners.

7.7 Specific duties of commissioners

Many of the functions of commissioners are discretionary but there are certain specific duties imposed upon commissioners:

7.7.1 Replacement of deceased trustee - Where the commissioners are aware that the trustee has died, they must as soon as is practicable, call a meeting of the creditors to elect a new trustee. They will also need to call such a meeting if the trustee resigns or is removed from office by the sheriff. If it is necessary to exercise this function, commissioners are advised to consult with The Accountant who will be happy to assist with the arrangements for the meeting and the subsequent procedures.

7.7.2 Ensuring the submission of accounts and the observance of accounting periods - The trustee must produce an account of their intromissions and a claim for remuneration at the close of each accounting period. Generally, statutory accounting periods cover 12 months, the first period commencing with the award of sequestration.

However, the trustee and the commissioners may agree to vary the duration of accounting periods provided each period begins with the end of the previous accounting period. These agreements may be made for one or more accounting periods and be for differing durations, but must be made and recorded before the end of the current accounting period.
The trustee must submit their accounts and claims for remuneration to their commissioners, and claim for outlays and remunerations, within 2 weeks of the end of each accounting period.

Should the trustee fail to submit their accounts for audit within that 2 week period, the commissioners should report the matter to The Accountant, who will investigate the matter and may report the trustee’s failure in duty to the sheriff. When there are funds available for division amongst the creditors, after providing for expenses yet to be met, a scheme of division of the available funds must be sent to the commissioners by the trustee at the same time as they send their account of intromissions for audit.

7.7.3 Audit of the trustee’s accounts

Commissioners are require to determine the trustee’s outlays and claim for remuneration and may audit the trustee’s accounts. This should be completed within 6 weeks of the end of each accounting period. Commissioners may also audit accounts and fix remuneration if a trustee resigns or dies.

When auditing the trustee’s accounts, commissioners ought to see and examine the vouchers for all expenditure. Equally, they should ensure that all funds due to the estate during the period have been credited (e.g. revenue and proceeds of realisation of assets).

They should also satisfy themselves that funds have been properly deposited in an interest bearing account with an appropriate bank or institution. Documents such as bank statements, deposit receipts, etc. should be examined to verify the estate stated to be held at the close of the account.

All legal business accounts incurred by a trustee must be taxed by the auditor of the court before which the bankruptcy is pending.

Such taxation may however be dispensed with provided:

- the solicitor is not an associate of the trustee;
- the amount due has been agreed with the solicitor; and,
- the commissioners have not determined that the account should be taxed.

When considering whether to dispense with taxation, the commissioners ought to satisfy themselves that the account relates to work which the trustee is entitled to employ a solicitor to do at the expense of the estate, e.g., litigation, conveyancing, and the giving or procuring of advice on legal difficulties which may occur.
Following the court’s decision in the cases of *Gourlay v Straton* (1827 5s. 804) and *Wilson’s Trustees v Wilson’s Creditors* (1863 2M.9), the trustee is not entitled to employ a solicitor to do work which is, or should be, within their own competence to do. Before passing payments for legal services, at audit of the trustee’s accounts, commissioners must satisfy themselves that the legal account has been taxed or that taxation has been properly dispensed with, as above.

7.7.4 Cash in hands of trustee

When auditing the trustee’s accounts, a commissioner must pay particular regard to the amount of cash held by the trustee during an accounting period, not just at the end of it.

The trustee must lodge all monies received by him in the course of their administration in an account in the name of the debtor’s estate with an appropriate bank or institution, as defined by Section 73 of the Act. Impliedly, these funds must be lodged in an interest bearing account. There is a statutory limit (at present £200) to the amount of cash which a trustee may retain in hand, that is, in cash, or in a non-interest bearing bank account. In accordance with the decision in *Freyd’s Trustee* (1984 2M 1293) trustees must not withdraw funds from the bank for the purpose of paying a dividend or dividends until such time as that dividend is actually to be paid to the creditors.

Similarly, funds in the bank earmarked for specific purposes must not be withdrawn until payment relating to that purpose is actually to be made. Funds so withdrawn but not paid out are classed as cash in the hands of the trustee.

In view of the limit of cash which may be held by a trustee, commissioners should therefore satisfy themselves by examination of bank statements, etc that there has been no infringement of the trustee’s duty to lodge funds in bank and not to retain in hand sums in excess of the prescribed limit.

7.7.5 Fixing the amount of the trustee’s remuneration - The Act refrains from prescribing a set scale of fees for trustees. Section 53(4) of the Act merely provides that:

‘*The basis for fixing the amount of the remuneration payable to the trustee may be a commission calculated by reference to the value of the debtor’s estate which has been realised by the trustee, 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 their responsibilities in administering the debtor’s estate.*’

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In fixing the amount of remuneration in respect of any accounting period, the commissioners may take into account any adjustment which they may wish to make in the amount of remuneration fixed in respect of any earlier accounting period. Commissioners may seek the advice of The Accountant in respect of this or any other aspect of their functions.
APPENDICES TO THE NOTES FOR GUIDANCE OF TRUSTEES

CONTENTS

APPENDIX A - Supplementary Questionnaire
APPENDIX B - Trustee’s accounts and notes for completion
APPENDIX B1(A) - Request not to fix remuneration in the current accounting period
APPENDIX B1(B) - Request to fix/re-fix remuneration for a previous accounting period
APPENDIX B2 - Request to extend/accelerate accounting period
APPENDIX B3 - The Accountant in Bankruptcy: Nomination of a replacement trustee
APPENDIX B4 - Acknowledgement by The Accountant
APPENDIX B5 - Detailed Statement of Time and Trouble
APPENDIX C - Form of inventory and valuation
APPENDIX D - Sederunt book checklist for trustees
APPENDIX D1 - Application for a Certificate of Discharge/Agent Contract termination
APPENDIX E - Form of scheme of division
APPENDIX F - Consignation Form
APPENDIX G - Form of notification of replacement trustee
APPENDIX H - Checklist of documents (statutory or otherwise) to be sent to The Accountant by the interim trustee
APPENDIX I - Checklist of documents (statutory or otherwise) to be sent to The Accountant by the trustee
APPENDIX J - Report of suspected offence
APPENDIX J1 - Summary of offences
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APPENDIX J3 - Minimum standards of enquiry for Suspected Offence
Reports

APPENDIX K - Bankruptcy Restriction Submission
APPENDIX L - Application for approval of action on heritage
APPENDIX M - Form 26 - Trustee’s Notice to Local Authority of a section 40(1)(b) application to sell/dispose of a property
APPENDIX N - Trustee report for debtor discharge
APPENDIX O - Trustee’s proposal for debtors contribution
APPENDIX P - Report to the Accountant where no statutory meeting called
APPENDIX Q - Debtor Contribution Order Variation Form
APPENDIX R - Sale on behalf of Secured Lender Account template

Please see Schedule 1 of The Bankruptcy (Scotland) Regulations 2014 for all forms to be used and The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014 for all applications to be used. Alternatively, they can be accessed from AiB’s website.
APPENDIX A

SUPPLEMENTARY QUESTIONNAIRE
Bankruptcy (Scotland) Act 1985

Bankruptcy of:

Court/Accountant in Bankruptcy:

Date of Bankruptcy:

AiB Reference number:

Notes for interviewer:

1. It is the duty of the trustee amongst other things to:
   • Ascertain the state of the debtor’s assets and liabilities;
   • Ascertain the reasons for the debtor’s insolvency;
   • Determine if the debtor’s behaviour justifies consideration of a Bankruptcy Restrictions Order (BRO) submission to the Accountant in Bankruptcy, and
   • Ensure that the debtor fully understands their obligations and their rights.

The Accountant requires, in all bankruptcies where acting as trustee and recommends in other cases, that the debtor be interviewed in person and that the interview should take place at the debtor’s home or at their place of business if considered more appropriate.

3. This supplementary questionnaire is designed to aid and provide a record of the interview.

4. In terms of Section 67(1) any false statement made by the debtor in relation to their assets or business or financial affairs to the interim trustee or trustee is an offence for which, if convicted, the debtor may face a fine or a prison sentence, or both.

5. In terms of Section 56B(2)(m) any false statement made by the debtor, or failure to provide information to the trustee, is deemed to be misconduct for which the debtor may be made subject to a Bankruptcy Restrictions Order (BRO).

6. Some questions herein are also to be found in the debtor’s statement of assets and liabilities - Form 4. This is intentional and the interviewer should check the debtor’s answers for consistency.

When the form has been completed the debtor should be invited to read it carefully and then to sign the following declaration:
I declare to the best of my knowledge and belief that the information provided by me and recorded in the following pages is correct and complete.

I understand that it is an offence to give false information or to conceal information regarding my assets, liabilities and business and financial affairs from the trustee.

I understand that if I do not co-operate with my trustee, and do not make full disclosure of all assets that I currently own, or may own in the future, to my trustee, I may be made subject to a Bankruptcy Restrictions Order (BRO)

I have been advised of my statutory obligations and understand them.

Signed:

Date:

Witnessed by:  (Signature)

(Name)

(Address)

(Occupation)
Debtor’s personal details

1) Surname

2) First names

3) Any other names (such as maiden name)

4) Date of birth

5) Place of birth

6) National insurance number

7) Home telephone number

8) Any other daytime telephone number

9) Present address (including post code)
PART 1

10) Has the debtor previously been sequestrated, been declared bankrupt, or signed a trust deed for the benefit of creditors? 
   Yes / No

11) If yes, give details:

12) Is there any party known to the debtor who may be prepared to provide sufficient funds to enable the bankruptcy to be recalled or an offer of composition to be made? 
   Yes / No

12a) If yes, give details:
13) What in the debtor’s opinion are the causes of their insolvency?
14) Is the debtor?
   - Single
   - Married
   - Living with a partner
   - Divorced
   - Separated
   - Widowed

15) Is the debtor now or has he/she been, in the last 5 years, involved in proceedings for divorce or separation? Yes | No

15a) If yes, give details, for example, dates, terms:

16) Does the debtor have any dependants? If so please provide details as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Relationship to debtor</th>
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</thead>
<tbody>
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</table>
# PART 2

## ASSETS (MOVEABLE)

1) Any cash held by a third party, for example, solicitor, accountant, relative

<table>
<thead>
<tr>
<th>Amount</th>
<th>Name and address of holder and relationship to debtor</th>
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<tbody>
<tr>
<td>£ ………………………………………...</td>
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</tbody>
</table>

2) Bank and Building Society Accounts held during the last 2 years

<table>
<thead>
<tr>
<th>Name and address of Bank or Building Society</th>
<th>Type of account (savings, current, etc.)</th>
<th>A/C number</th>
<th>Balance (£)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
3) Life assurance policies (including any policies assigned to any creditor or other person other than mortgage endowment policy) – if no, go to question 5 (Other Insurance Policies)

<table>
<thead>
<tr>
<th>Company</th>
<th>Type of policy</th>
<th>Policy no.</th>
<th>Premium</th>
<th>Sum assured</th>
<th>Date of maturity</th>
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</table>

4) When any policy is assigned give details of assignee

<table>
<thead>
<tr>
<th>Policy No</th>
<th>Assignee’s name and address</th>
<th>Reason for assignation</th>
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</table>

5) Other Insurance Policies

<table>
<thead>
<tr>
<th>Company</th>
<th>Property or risk covered</th>
<th>Premium</th>
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</table>
1) Investments

Give details of any investments, such as, stocks, shares, bonds, savings certificates, pensions, etc.

<table>
<thead>
<tr>
<th>Type of investment</th>
<th>Name of company or institution</th>
<th>Ref. no.</th>
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1a) Serial numbers of any premium bonds held:

11
1) Other assets and contingent assets

List any other assets or contingent assets, for example, electrical goods, jewellery, antiques, debts due to the debtor (excluding trade debtors), giving amount and from whom, possible inheritances, benefits under a will, claims for damages.

<table>
<thead>
<tr>
<th>Description</th>
<th>State whether items subject to hire purchase or other credit agreement - YES / NO</th>
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</table>
Motor Vehicles

1) Does the debtor own a motor vehicle? [ ] Yes [ ] No

If yes, please fill in the details:

<table>
<thead>
<tr>
<th>Registration no</th>
<th>Make</th>
<th>Insured?</th>
<th>Hire purchase, lease or credit sale?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>[ ] Yes [ ] No [ ] Yes [ ] No</td>
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</table>

Where is it?

Estimated value of vehicle to the estate? £ ........

Note: if the vehicle is subject to HP, lease or other finance agreement, state the reference number here

2) Does the debtor have the use of a motor vehicle which is not their own? [ ] Yes [ ] No

If yes, please fill in the details:

<table>
<thead>
<tr>
<th>Registration number</th>
<th>Make</th>
<th>Name and address (including the postcode) of owners</th>
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(Note: if the debtor has more than one motor vehicle, complete one of these pages for each)
1) Details of any assets transferred to any person during the past 5 years (excluding sales at full value):

<table>
<thead>
<tr>
<th>Item received</th>
<th>To whom transferred</th>
<th>Consideration</th>
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<tbody>
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</table>
**ASSETS (HERITABLE)**

**The Family Home**

1) (a) Does the debtor own wholly or jointly the house he/she lives in *(please tick)*
   - [ ] YES
   - [ ] NO

(b) If yes, is the house wholly owned by the debtor or jointly owned with another person(s)
   - *Wholly owned/ Jointly owned*

(c) If jointly owned give names and addresses of co-owner(s)
   - ……………………………………………………………………………
   - ……………………………………………………………………………
   - ……………………………………………………………………………
   - ……………………………………………………………………………
   - ……………………………………………………………………………
   - ……………………………………………………………………………
   - ……………………………………………………………………………

(d) Who, besides the debtor, has occupancy rights on the house?

<table>
<thead>
<tr>
<th>Names</th>
<th>Relationship to debtor</th>
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PART 6

(e) **Debtor’s estimate of property’s present market value?**

(f) **Name and address of all secured creditors**

<table>
<thead>
<tr>
<th>Reference</th>
<th>Current sum outstanding</th>
<th>Assigned policies</th>
<th>Value of policies</th>
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(g) **If property is insured, insert name of company and amount insured for:**

<table>
<thead>
<tr>
<th>Name of company</th>
<th>Amount</th>
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(h) **Has the secured creditor commenced re-possession proceedings?**

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<thead>
<tr>
<th>Yes / No</th>
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<td>Yes</td>
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2) (i) **If the debtor lives in rented property, in whose name is the tenancy?**

(ii) **State the name and address of the owner of the property:**
(iii) Evidence of tenancy provided at interview: Yes / No (delete as appropriate)
If yes, provide details:
1) Details of any other heritable property in which the debtor resided or had an
interest in, as owner, part-owner, or tenant, at any time during the 5 years
preceding the date of bankruptcy. This particularly includes a former family
home which might have recently been repossessed by the secured creditor.

(a) Properties in which the debtor still has an interest:

<table>
<thead>
<tr>
<th>Address</th>
<th>Type of property (residential, commercial, workshop etc.)</th>
<th>Nature of interest (owner, part-owner, or tenant)</th>
<th>Name &amp; address of joint owner or landlord</th>
<th>Name &amp; address of secured creditor (include date of repossession, if applicable)</th>
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</table>
(b) Property in which the debtor no longer has an interest:

<table>
<thead>
<tr>
<th>Address</th>
<th>Date and method of disposal (assignation of lease, disposition, renunciation etc.)</th>
<th>Price received (if applicable)</th>
<th>Name and address of new owner / tenant</th>
<th>Name and address of secured creditor</th>
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</table>
LIABILITIES

1) Unsecured loans:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Lender</th>
<th>Subject</th>
<th>Amount owing</th>
</tr>
</thead>
<tbody>
<tr>
<td>£………..</td>
<td>………………………………………………..</td>
<td>……………………………………</td>
<td>£……………</td>
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2) Hire Purchase:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Lender</th>
<th>Subject</th>
<th>Amount owing</th>
</tr>
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</tbody>
</table>
3) Credit Cards: (Access, Visa, American Express, Diners Club, Style, store cards etc)

<table>
<thead>
<tr>
<th>Card</th>
<th>Amount owing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£</td>
</tr>
<tr>
<td></td>
<td>£</td>
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<td>£</td>
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<tr>
<td></td>
<td>£</td>
</tr>
</tbody>
</table>
4) Any other liabilities or contingent liabilities:
   (personal guarantees, legal proceedings pending, etc.
   Note: trade creditors should be entered on page 21)

<table>
<thead>
<tr>
<th>Name of creditor</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
## INCOME AND EXPENDITURE

### Salary and wages

<table>
<thead>
<tr>
<th>Income</th>
<th>Amount (£)</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debtor’s salary/wages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partner’s salary/wages</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

### Pensions

<table>
<thead>
<tr>
<th>Pension(s)</th>
<th>Amount (£)</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Pension(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private or work pension(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pension Credit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

### Other income

<table>
<thead>
<tr>
<th>Other income</th>
<th>Amount (£)</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance or Child Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boarders or lodgers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-dependant contribution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Student loans or grants</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*(To be completed with any other household income)*

**Total**
<table>
<thead>
<tr>
<th>Type of benefit</th>
<th>Amount (£)</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jobseeker’s Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Working Tax Credits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child Tax Credits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment and Support Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DLA, PIP or Attendance Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carer’s Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing Benefit/Local Housing Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council Tax Reduction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Universal Credit</td>
<td>(Other)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Other)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Other)</td>
<td></td>
</tr>
</tbody>
</table>

**Total**

Please use the space provided below to give details of any benefit listed under “other”
<table>
<thead>
<tr>
<th>Essential expenditure</th>
<th>Amount</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ground rent, service charges, factor fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Secured Loans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgage Endowment / Mortgage PPI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building and contents insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pension and life insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TV Licence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Magistrates or sheriff court fines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance or Child Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hire Purchase/conditional sales</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Childcare costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adult care costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone</th>
<th>Amount</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home phone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mobile phone(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Travel</th>
<th>Amount</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public transport (work, school, shopping, etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Car Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fuel (Petrol, Diesel, Oil, etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MOT and car maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breakdown and recovery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking charges or tolls</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Housekeeping

<table>
<thead>
<tr>
<th>Amount</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food and milk</td>
<td></td>
</tr>
<tr>
<td>Cleaning and toiletries</td>
<td></td>
</tr>
<tr>
<td>Newspapers and magazines</td>
<td></td>
</tr>
<tr>
<td>Cigarettes tobacco and sweets</td>
<td></td>
</tr>
<tr>
<td>Alcohol</td>
<td></td>
</tr>
<tr>
<td>Laundry and dry cleaning</td>
<td></td>
</tr>
<tr>
<td>Clothing and footwear</td>
<td></td>
</tr>
<tr>
<td>Nappies and baby items</td>
<td></td>
</tr>
<tr>
<td>Pet food</td>
<td></td>
</tr>
</tbody>
</table>

**Total**

### Other expenditure

<table>
<thead>
<tr>
<th>Amount</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health (dentist, glasses, prescriptions, health insurance)</td>
<td></td>
</tr>
<tr>
<td>Repairs/house maintenance (including window cleaning, maintenance contracts)</td>
<td></td>
</tr>
<tr>
<td>Hairdressing/haircuts</td>
<td></td>
</tr>
<tr>
<td>Cable, satellite and internet</td>
<td></td>
</tr>
<tr>
<td>TV, video and other appliance rental</td>
<td></td>
</tr>
<tr>
<td>School meals and meals at work</td>
<td></td>
</tr>
<tr>
<td>Pocket money and school trips</td>
<td></td>
</tr>
<tr>
<td>Lottery and pools etc.</td>
<td></td>
</tr>
<tr>
<td>Hobbies/leisure/sport (include pub outings, etc.)</td>
<td></td>
</tr>
<tr>
<td>Gifts (Christmas, birthday, charity etc.)</td>
<td></td>
</tr>
<tr>
<td>Vet bills and pet insurance</td>
<td></td>
</tr>
</tbody>
</table>

**Total**

### All other expenses not covered above

<table>
<thead>
<tr>
<th>Amount</th>
<th>Frequency</th>
</tr>
</thead>
</table>

**Total**

### Total Income and Surplus Income

<table>
<thead>
<tr>
<th>Total Income</th>
<th>Surplus Income</th>
</tr>
</thead>
</table>

### Total Expenditure and Assessed Contribution

<table>
<thead>
<tr>
<th>Total Expenditure</th>
<th>Assessed Contribution</th>
</tr>
</thead>
</table>

### Proposed first payment date (dd/mm/yyyy)

___ / ___ / ___

### Proposed frequency of subsequent payments

________________________
Has the debtor ever traded?

YES  Answer all the questions in PART 9  NO  Go to PART 10

1) For which period was the last set of accounts prepared?

2) At what address are the accounts books and other accounting records kept?

Note:
Advise debtor if they are in their possession that they must retain them in safe keeping until told otherwise by the trustee.

3) Please give the names and addresses of the debtor’s:

Accountant/Book-keeper
PART 9

Solicitors

5) BUSINESS PREMISES

(tick where appropriate)

OWNED? LEASED?

5a) MORTGAGE HOLDER

<table>
<thead>
<tr>
<th>Name and address</th>
<th>Ref. No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

6) ASSETS, for example, machinery, vehicles subject to Hire Purchase

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
7) TRADE DEBTORS:

If the debtor was in business list any trade debtors here (continue on separate sheet if necessary)

<table>
<thead>
<tr>
<th>Name of debtor</th>
<th>Date of invoice</th>
<th>Amount ( £ )</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>
8) TRADE CREDITORS:

If the debtor was in business list any trade creditors here
(continue on separate sheet if necessary)

<table>
<thead>
<tr>
<th>Name of creditor</th>
<th>Amount (£)</th>
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<tbody>
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</tbody>
</table>
**DIRECTORSHIPS**

Is the debtor now, or was he/she at any time in the last 5 years, a director of a limited company, or involved in its management?

(please tick)  YES ☒  NO ☐  Go to PART 11

If yes, please give details of the company and answer questions 1 to 12:

<table>
<thead>
<tr>
<th>Name</th>
<th>Company number</th>
<th>Shareholding</th>
</tr>
</thead>
</table>

Names and address of other company directors and company secretaries:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Shareholding</th>
</tr>
</thead>
</table>
### PART 10

1) Has the debtor formally resigned as director?  
   Yes / No

2) Has the company been formally dissolved?  
   Yes / No

3) Is the debtor still involved with the company in any capacity?  
   Yes / No

4) If yes, give details:

5) What was the company’s business?

   ........................................................................................................................................................
   ........................................................................................................................................................

6) When did it trade?  
   From: ........................................ To: ........................................

7) What were its assets?
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>8) Did the company go into liquidation etc.?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>9) If yes, who dealt with it?</td>
<td></td>
</tr>
<tr>
<td>10) Did the debtor give any personal guarantees?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>11) Prior to bankruptcy, has the debtor ever been disqualified by court from taking part in the management of, or acting as a director of, a limited company?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>12) If yes, give details:</td>
<td></td>
</tr>
</tbody>
</table>
EMPLOYMENT CLASSIFICATION

1) At the date of bankruptcy the debtor's employment classification was:  (tick one)

A  □  Employee in employment

B  □  Self-employed

C  □  H M Forces

D  □  Work-related government training

E  □  Registered unemployed

F  □  Not in labour force

(a) If you have ticked A or B, please state the occupation of the debtor at the date of bankruptcy: …………………………………………………………………………………..………….

(b) If you have ticked D, E or F, please answer question 2.

2) Within the 6 month period prior to bankruptcy the debtor's employment classification is best described as:  (tick one)

A  □  Employee in employment

B  □  Self-employed

C  □  H M Forces

X  □  The same as at date of bankruptcy

If you have ticked A or B, please state the occupation(s) of the debtor within the 6 month period prior to bankruptcy:
PART A - Employment status

Is the debtor in paid employment?  *(please tick)*  
YES  NO

If yes, please state name and address of employer:

Works number:

Employed as?
PART B - Self-employment

Was the debtor self-employed?  
YES  
NO  
(please tick)

The following questions must be answered in the case of a debtor who is, or who was at any time during the last 6 years, self-employed:

| Nature of trade/ business/ profession: | ................................................................. |
| Trading name: | ................................................................. |
| Is / was it a partnership? | Yes / No |
| If yes, give name and address of partner(s): | ................................................................. |
| (i) | ................................................................. |
| (ii) | ................................................................. |
| (iii) | ................................................................. |

Date trade/ business/ profession started .................................. ceased ..................................
Business address (including post code): .................................................................
.................................................................
.................................................................
.................................................................

If trading ceased within the last 6 years please provide details of all other periods of self-employment worked in the last 6 years before the date of bankruptcy:

trading as ................................................................. from ................. to .................
trading as ................................................................. from ................. to .................
trading as ................................................................. from ................. to .................
How was Class 2 National Insurance paid? (tick as appropriate)

Cash at local Contributions Agency Office  [ ] Direct Debit  [ ] Quarterly  [ ]

<table>
<thead>
<tr>
<th>V.A.T. number</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current (or last) income tax ref. no.</td>
<td></td>
</tr>
<tr>
<td>Address of tax office (including post code)</td>
<td></td>
</tr>
<tr>
<td>........................................................................................................</td>
<td></td>
</tr>
<tr>
<td>........................................................................................................</td>
<td></td>
</tr>
<tr>
<td>........................................................................................................</td>
<td></td>
</tr>
</tbody>
</table>
PART C – Employees

Does the debtor have any employees? (please tick) YES ☐ NO ☐

If yes, was a PAYE scheme in operation? (please tick) YES ☐ NO ☐

If yes, state name and address of relevant Collector of Taxes and PAYE reference no:

……………………………………………………………………………………………………………………………………………
……………………………………………………………………………………………………………………………………………
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Are there any Class 1 NI contributions arrears? (please tick) YES ☐ NO ☐

Is any money owed to employees/former employees for wages, holiday pay, redundancy payments, etc YES ☐ NO ☐

If yes, please list names and addresses (including post codes)

……………………………………………………………………………………………………………………………………………
……………………………………………………………………………………………………………………………………………
……………………………………………………………………………………………………………………………………………
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……………………………………………………………………………………………………………………………………………
……………………………………………………………………………………………………………………………………………
<table>
<thead>
<tr>
<th>ESTATE</th>
<th>EXPENSES</th>
<th>BALANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>_______</td>
<td>_______</td>
<td></td>
</tr>
</tbody>
</table>

Bankruptcy of ………………………………………………………………

Receipts and payments of account of ……………………………………
as Trustee

From---To----- From---To---

Realised/ (Paid) Total

Represented by (Reconciliation showing bank balance, sums due etc.)

Signed ……………………………………………………….
(Trustee)
NOTES:

Guidance notes for the completion of accounts

1. A copy bank statement showing the closing balance must be submitted with the account to verify lodgements, balances etc (further bank statements may be requested at any time)

2. Copy vouchers should be submitted to verify outlays shown through the account. (See Part 5, 5.1.2 for exceptions)

3. Receipts and payments for the current accounting period should be shown in the left hand column of the account with cumulative totals shown in the right hand column.

4. Accounts must identify whether the debtor was registered for VAT. If the debtor was VAT registered and VAT is recoverable, expenses should be shown through the account net of VAT. If VAT is irrecoverable expenses should be shown gross of VAT. e.g. Valuation fee £58.75 (inclusive of £9.79 VAT).

   If the debtor was VAT registered only £48.96 should be shown through the account. The recoverable VAT of £9.79 may be included in the reconciliation below the account as appropriate.

   If the debtor was not VAT registered £58.75 should be shown through the account.

5. If irrecoverable VAT in respect of outlays is shown as a separate total in the account, a breakdown of this figure should be included in the Notes to the account.

6. The trustee may include a reconciliation of funds below the account to show how the balance is to be achieved.

   e.g. The account closes with the balance of the sequestrated estate at £4,000.00

   Bank Balance £4,039.79
   Funds due to Trustee (£30.00)
   Recoverable VAT £9.79
   £4,000.00
REQUEST NOT TO FIX REMUNERATION IN CURRENT ACCOUNTING PERIOD

Bankruptcy of:

AiB ref no: 

Account period no: from to

I enclose my SIP9 for the above period and request that The Accountant in Bankruptcy audits my accounts for this accounting period, but does not fix my remuneration until requested to do so with a future accounting period, as per Section 53(5) of the Bankruptcy (Scotland) Act, 1985, as amended, for the following reason(s):

..........................................................................................................................................................

..........................................................................................................................................................

Signed

(Trustee)

Date
REQUEST FIX/RE-FIX REMUNERATION FOR A PREVIOUS ACCOUNTING PERIOD

Bankruptcy (Scotland) Act 1985 (section 53(5))

Bankruptcy of:

AiB ref no: 

Current Account period no: from to

Account period to be fixed: from to

I request that The Accountant in Bankruptcy now fixes/re-fixes* my remuneration for the above accounting period.

I confirm that the remuneration should be fixed in accordance with, the SIP9 submitted on (insert date)/the attached revised SIP9*, due to the following circumstances:

...........................................................................................................
...........................................................................................................
...........................................................................................................

Signed

(Trustee)

Date

* delete as appropriate
REQUEST TO EXTEND / ACCELERATE ACCOUNTING PERIOD

Bankruptcy (Scotland) Act 1985 (section 52(2)(b))

Sequestration of: ……………………………………………………………………………………………..

Accountant’s ref no:

I request that the accounting period ending on __________________
be extended / accelerated by _______ months to close on _____________

Reason (must be completed)   ____________________________________
____________________________________________________________________
____________________________________________________________________

Signed ………………………………………………………………..

(Permanent Trustee)

Date    …………………………………….
APPENDIX B3

Request To Be Appointed As Replacement Trustee

Bankruptcy (Scotland) Act 1985

Request To The Accountant In Bankruptcy
For The Appointment Of A Trustee

Following the meeting of creditors, held on ____________________________

at which no replacement trustee was elected, I, _________________________

being a qualified Insolvency Practitioner, hereby request appointment as trustee

in the bankruptcy of _____________________________ and undertake to so

act if appointed by The Accountant in Bankruptcy.

Signed _______________________ Date __________________

Insolvency Practitioner
Bankruptcy (Scotland) Act 1985

Bankruptcy of: ........................................................................................................

AiB ref no:  

Being advised by the trustee that there have been no significant transactions with the estate since the previous accounting period, The Accountant in Bankruptcy acknowledges that no statutory account will be lodged until the next accounting period closing on ............................................

Signed .................................................................

(Trustee)

Date .................................................................
APPENDIX B5

Detailed Statement of Time and Trouble

<table>
<thead>
<tr>
<th>Bankruptcy of -----------------------------</th>
<th>Date from ------ to ---------</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Name</td>
<td>Date</td>
</tr>
<tr>
<td>-----------------</td>
<td>------</td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

Total
FORM OF INVENTORY AND VALUATION

Inventory and valuation of the estate of [DEBTOR’S NAME] made up by [TRUSTEE’S NAME OR ADMINISTRATOR], trustee in the bankruptcy of [DEBTOR’S NAME], in terms of section 38(1)(b) of The Bankruptcy (Scotland) Act 1985.

EXAMPLE

Heritage
Dwelling house at 8 High Street, Anytown, valued at £25,000.00

Moveables
1. Royal Bank of Scotland:
   (a) Deposit Accountant in Bankruptcy £1,180.56
   (b) Current Accountant in Bankruptcy £23.72 £1,204.28
2. Stamp collection, valued at
3. Book debts:
   Thomas Brown £30.13
   Andrew Forbes £6.41
   George McLeod £3.27
   William Smith £15.00
   John Thomson £275.83 £330.64
4. Stock in trade, valued at £1,197.07
5. £1,000.00 3½% War Stock @ 40.7/8th £408.75 £28,440.74

(Signed) ………………………………………………………………………
(Trustee)

Note: [...] insert information indicated
1. A copy of a debtor application made under section 5(2)(a).


3. A copy of an award of sequestration grated under section 12(1) or (3).

4. A copy of a warrant to cite the debtor granted under section 12(2).

5. (a) The audited accounts sent to the trustee by the Accountant in Bankruptcy in accordance with section 13A(5)(d), and

(b) the determination fixing the amount of the outlays and remuneration payable to the interim trustee sent to the trustee by the Accountant in Bankruptcy in accordance with section 13A(5)(d).

6. A copy of any—

(a) order recalling or refusing to recall an award of sequestration by the sheriff under section 17 and sent to the trustee under section 17(8)(b)(ii),

(b) grant or refusal to grant a recall of an award of sequestration under section 17D(1), 17E(6) or 17G.

7. A copy of any order under section 41(1)(b)(ii) or 41A(1)(b)(ii) sent to the trustee under section 17(8)(b).

8. Where the trustee is a replacement trustee appointed under section 25 and the Accountant in Bankruptcy was not the original trustee—

(a) a copy of any determination fixing the amount of the outlays and remuneration payable to the original trustee and of the original trustee’s audited accounts which is sent to the trustee under section 26(3)(b)(ii),

(b) upon appointment, such information as is appropriate to provide a record of the sequestration process before the trustee’s appointment as replacement trustee (except that no entry is to be made in relation to any written comments made by the original trustee under section 20(2)), and

(c) an entry recording any certificate of discharge issued to the original trustee under section 27.

9. A copy of a statement of assets and liabilities sent to the trustee under section 19(1) or (2).

10. A copy of a notice given under section 21A(2).
11 A copy of a report made under section 21B(1)(a).

12 Where the trustee is a replacement trustee appointed under section 25 and the Accountant in Bankruptcy was the original trustee, upon appointment, such information as is appropriate to provide a record of the sequestration process before the trustee's appointment as replacement trustee.

13 A copy of any initial proposal for the debtor's contribution provided by the trustee under section 32A(1)(b).

14 A copy of a debtor contribution order applying to the debtor.

15 A copy of any decree issued under section 34 affecting the sequestrated estate.

16 A copy of any decree of recall issued following an application under section 35(2).

17 A copy of any decree issued under section 36 affecting the sequestrated estate.

18 The inventory and valuation of the estate made up and maintained in accordance with section 38(1)(b).

19 A copy of an account given by the debtor under section 43A(2).

20 The debtor's deposition at an examination subscribed under section 47(5).

21 A copy of the record of an examination sent to the Accountant in Bankruptcy under section 47(6).

22 An appropriate entry in relation to the production of any document to the trustee in accordance with section 48(7), stating the date when it was produced to the trustee.

23 Where the trustee accepts or rejects a claim under section 49, the decision on the claim, specifying—

   (a) the amount of the claim accepted by the trustee,
   (b) the category of debt, and the value of any security, as decided by the trustee, and
   (c) if the claim is rejected, the reasons.

24 A copy of a decision of the Accountant in Bankruptcy under section 49(6C)(b) and of the sheriff under section 49(6D).

25 An agreement or determination in respect of the accounting period under section 52(2)(b)(i) or (ii).

26 The audited accounts, the scheme of division and the final determination in relation to the trustee's outlays and remuneration, as mentioned in section 53.
A copy the certificate of discharge given to the debtor under section 54(2) or 54A(2) or 54F.

A copy the certificate deferring discharge where the debtor cannot be traced issued under section 54D(4)(b) or (6)(b).

A decision of the court under section 63 and of the Accountant in Bankruptcy under section 63A.

A copy of a decree arbitral or, as the case may be, an appropriate entry recording the compromise referred to in section 65.

The minutes of the meeting mentioned in paragraph 7 of Schedule 6.

A copy of the minutes of any meeting sent to the Accountant in Bankruptcy in accordance with paragraph 16 of Schedule 6.

Where a meeting of commissioners is called in accordance with paragraph 17 of Schedule 6—

(a) a record of the deliberations of the commissioners at the meeting,

(b) where the trustee is not clerk in accordance with paragraph 21 of Schedule 6, a record of the deliberations of the commissioners transmitted by the commissioner acting as clerk, such commissioner to authenticate the insertion when made, and

(c) in relation to any matter agreed without a meeting, the minute recording that agreement signed in accordance with paragraph 23 of Schedule 6."

A copy of any decision (including any determination, direction, award, acceptance, rejection, adjudication, requirement, declaration, order or valuation) relating to the sequestration which is—

(a) issued by the Accountant in Bankruptcy, and

(b) not otherwise mentioned in this Schedule.

A copy of any decree, interlocutory decree, direction or order relating to the sequestration which is—

(a) granted by the court, and

(b) not otherwise mentioned in this Schedule."
Other documents to be inserted as appropriate:

1. Request to court to appoint new interim trustee (if applicable)
2. Copy court order recalling or refusing to recall the award of bankruptcy
3. Copy court order protecting the occupancy rights of a non-entitled spouse
4. Entry relative to the grant of a certificate of discharge to the interim trustee (if applicable)
5. Copy decree of reduction of a gratuitous alienation
6. Copy decree of recall of an order for payment of a capital sum on divorce
7. Copy decree of reduction of an unfair preference
8. Record of debtor’s evidence at an examination, duly subscribed
9. Copy record of whole examination
10. Adjudication on claims
11. Entry relative to the sheriff’s decision on any appeal against the trustee’s adjudication
12. Copy order by sheriff deferring the debtor’s automatic discharge
13. Receipt from debtor of any reversions
14. Entry relative to court’s decision to any application to cure defects in procedure
15. Copy of decree arbitral
16. Entry relative to compromise with regard to any claim of whatever nature made against or on behalf of the sequestrated estate
17. Copy of decree of reduction of order discharging the debtor
18. Minutes of meetings of creditors (non-statutory)
19. Minutes of meetings of commissioners
20. Minutes of matters agreed by commissioners without a meeting
21. Copy of Debtor Contribution Order (DCO)
22. Such other entries and insertions as may be necessary to provide a full record of the bankruptcy process before the date of the trustee’s act and warrant.
To: The Accountant in Bankruptcy

From: _____________________  (Trustee Name)

I now apply for a Certificate of Discharge in the sequestration of
Case Reference: _________________________________
Debtor Name: _________________________________

I confirm the following:

- All assets have been realised or abandoned      Yes / No *  
  (If No, please provide details of the asset and reasons, if not already
  notified to AiB)

- The debtor was discharged on ________________ (enter date)

- The Debtor Contribution Order has been completed / brought to an end
  * on _____________  (enter date)

- All invoices payable to AiB have been settled           Yes / No *

- The circular for final account ending ______________ (enter date)
  was issued on ________________(enter date) and the appeal period
  has passed, with no appeal(s) lodged

- All audit observations for the above account have been answered
  Yes / No *

- The circular advising the debtor and creditors of my intention to seek
  discharge was issued on _________________ (enter date)

- All Sederunt book documents have been uploaded to BASYS / sent to
  AiB *

pp _______________________
  Trustee
  *delete as necessary
## APPENDIX E

### FORM OF SCHEME OF DIVISION

**AiB Ref No:**

State of Funds and Scheme of Division thereof as at …../……/…… as submitted by ………………………………………………………………………………. trustee in the bankruptcy of …………………………………………………………………………………………………………………………………………..

Funds held as at …../……/…… (i.e. closing balance of account) £

**ADD:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income (description)</td>
<td>£</td>
</tr>
<tr>
<td>Bank interest</td>
<td>£</td>
</tr>
</tbody>
</table>

**Sub-total** £

**LESS:** Commission determined but not shown as taken £

<table>
<thead>
<tr>
<th>Vat thereon</th>
<th>£</th>
</tr>
</thead>
</table>

**Sub-total** £

**LESS:** Provisions-

| (a) Commission previously deferred, now determined | £ |
| (b) Vat thereon                                    | £ |
| (c) Accountant’s audit fee thereon                 | £ |
| (d) Accountant’s audit fees raised but not shown as settled | £ |
| (e) Statutory fees raised but not shown as settled | £ |
| (f) Commission for current accounting period       | £ |
| (g) Vat thereon                                    | £ |
| (h) Accountant’s audit fee for current accounting period | £ |
| (i) Commission to close (if appropriate)           | £ |
| (j) Vat thereon                                    | £ |
| (k) Accountant’s final audit fee (if appropriate)  | £ |
| (l) Final posts and incidents                      | £ |
| (m) Vat thereon                                    | £ |
| (n) Petitioning creditors expenses                 | £ |

**Sub-total** £
LESS: Preferred creditors

£

£

Sum available for ordinary creditors £

The sum of £ represents (subject to further accrued bank interest) a first and final dividend of , or thereby, in the £, on claims totalling £ admitted to an ordinary ranking, conform to Schedule of ordinary creditors attached hereto.

Schedule of ordinary creditors

<table>
<thead>
<tr>
<th>Creditor</th>
<th>Claim admitted</th>
<th>Dividend at</th>
<th>Statutory interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

  p in the £  if applicable

1
2
3
4
5
6
7
8
9
10

Reversion to debtor (if applicable)

£
CONSIGNATION RECEIPT FOR UNCLAIMED DIVIDENDS

[Bank letterhead]

Date: ( …… / …… / ……. )

Received on the account of the Accountant in Bankruptcy by
the hands of

………………………………… trustee in the sequestration of
………………………………

the sum of £ [sum] ( [amount in words] ) being the amount of
dividends unclaimed in the said sequestration, conform to list
annexed.

[Signature of bank officer]

List of parties entitled to dividends:

<table>
<thead>
<tr>
<th>Name and address of party consigned</th>
<th>Details of dividend</th>
<th>Amount of dividend</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ...............................</td>
<td>First and final dividend of ....... p</td>
<td>£ .........................</td>
</tr>
<tr>
<td>..................................</td>
<td>in the £ on claim of</td>
<td>£ ..........................</td>
</tr>
<tr>
<td>..................................</td>
<td>£ ..........................</td>
<td></td>
</tr>
</tbody>
</table>

| 2 ............................... | First and final dividend of ....... p | £ ......................... |
| .................................. | in the £ on claim of | £ .......................... |
| .................................. | £ .......................... |

..............
3  .............................. First and final dividend of ........... p  £ ......................
.............................. in the £ on claim of £ ......................
..............................

4  .............................. First and final dividend of ........... p  £ ......................
.............................. in the £ on claim of £ ......................
..............................
APPENDIX G

Report by the original trustee under section 25(1)
of The Bankruptcy (Scotland) Act 1985, as amended

REPORT TO THE ACCOUNTANT IN BANKRUPTCY

in the bankruptcy of
(insert full name and address
of debtor)

1. The sheriff at [insert court name]

Or

1. The Accountant in Bankruptcy

sequestrated (insert name of debtor) on (insert date) and (insert name
of trustee) was appointed as trustee.

2. (insert name of original trustee) as the original trustee in the above
bankruptcy reports to The Accountant in Bankruptcy that a statutory
meeting was called in accordance with the provisions of section 21A of
The Bankruptcy (Scotland) Act 1985.

3. The meeting was attended by (insert number of creditors attending)
creditors or their representatives who were advised of their right to
elect a replacement trustee and commissioners.

4. A copy of the report of the meeting is attached.

5. The meeting duly elected (insert name of replacement trustee) to be
the replacement trustee.

6. I hereby request The Accountant in Bankruptcy to declare and
confirm the election of the said (insert name of replacement trustee)
as replacement trustee in accordance with section 25(5) of that Act.

Date (insert date of report)

Signed

(signature of trustee/Accountant in Bankruptcy or person authorised by him)

Signed (trustee)
1. Within three months of a sheriff appointing another trustee, the interim trustee must submit to The Accountant in Bankruptcy:
   - their accounts of their intromissions (if any) with the debtor’s estate;
   - and,
   - their claim for outlays and remuneration.

2. On determination of the interim trustee’s accounts the interim trustee must apply to The Accountant in Bankruptcy for their discharge and include a copy of the letter sent to creditors informing them of the application for discharge.
### Checklist of Documents (Statutory or Otherwise) to Be Sent to the Accountant in Bankruptcy by the Trustee

1. A copy of the debtor’s statement of assets and liabilities.

2. A copy of the inventory and valuation of the debtor’s estate (Section 38(1)(c)) of the Act.

3. A copy of the notification to creditors about the statutory meeting.

4. A copy of the signed minutes of the statutory meeting of creditors and any other meeting of creditors.

5. Where appropriate, a copy of their intimation to the creditors of their intention to apply for a certificate of discharge inter alia including therein intimation of the right to make representations.

   N.B. Discharge of a trustee is appropriate only in cases where there is an elected trustee and it is not a statutory requirement. An interim trustee in such circumstances does not have to apply for discharge and in cases where the interim trustee themselves becomes the elected trustee it is not anticipated that they will do so since their ultimate discharge as trustee will cover the period of interim trusteeship—see section 57(5).

6. Where appropriate, a copy of the revised statement of the debtor’s affairs.

7. Where appropriate, a copy of the Debtor Contribution Order (DCO)

8. An account of their intromissions and claim for remuneration.

9. If a replacement trustee is elected by the creditors, a copy of minutes of the meeting of creditors and the Court Order appointing the replacement trustee.

10. If a replacement trustee is elected by the creditors, a copy of the circular (or notification) to the debtor and the creditors intimating the amount of outlays and remuneration payable to the original trustee, together with a signed certificate of posting relative thereto.

11. If appropriate, a copy of the record of the private or public examination of the debtor or other relevant person (section 48(6) of the Act).

12. If appropriate, a copy of the intimation sent to the debtor advising him of the private examination of a third party and of the day, date, time and place of such private examination, together with a signed certificate of posting thereof (section 47(2)(b) of the Act).
13. If appropriate, copy of the intimation sent to every known creditor (and debtor if appropriate) advising of the public examination together with a signed certificate of posting thereof (section 45(3) of the Act).

14. In cases where there are no commissioners and the trustee’s Accounts are to be audited by, and their scheme of division approved by, The Accountant, the creditors’ claims and ground of debt together with the trustee’s adjudications thereon.

15. Where commissioners are acting a copy of the trustee’s accounts; claim for remuneration; and scheme of division of the funds; all as submitted to the commissioners (section 53(1) of the Act).

16. Where there are no commissioners, the trustee’s accounts for audit; their claim for remuneration for determination; and their scheme for division for approval, all by The Accountant in terms of section 53 of the Act.

17. A copy of the circular (or notification) to the debtor and the creditors indicating the remuneration fixed to the trustee, together with a signed certificate of posting relative thereto.

18. On conclusion of the trustee’s administration, the sederunt book; a copy of their audited final account; and consignment receipt(s) for unclaimed dividends (section 57(1)(b) of the Act).

19. A copy of the circular (or notification) sent by the trustee to the debtor and the creditors intimating inter alia their application for a certificate of discharge, together with a signed certificate of posting relative thereto.

20. Where there are no commissioners, all legal business accounts against the sequestrated estate, for perusal and onward transmission to the Auditor of Court for taxation, all prior to settlement of said legal business accounts.
REPORT OF SUSPECTED OFFENCE(S)

AiB Ref. No. ........../........

Part 1 - DETAILS OF BANKRUPTCY

DEBTOR

Name: ........................................................... Male/Female

Address: .................................................................
.................................................................
.................................................................
.................................................................
.................................................................

Date of Birth / Age: ......................

Trading Name/Address: .................................................................
(If applicable) .................................................................
.................................................................

Date of Bankruptcy: .........................

Court bankruptcy Awarded: .................................................................

Agent/Trustee * :

Name .................................................................
Address .................................................................
.................................................................
.................................................................

(If Witness) Age .........................

Date of Appointment/Election * : .........................

______________________________________________________________

The following report is made in terms of Section 3(3) of The Bankruptcy (Scotland) Act 1985 (as amended).

Signed: .................................................................

Capacity to Act: .................................................................

Date: .........................
Part 2 - INTIMATION TO DEBTOR

Debtor informed of the

Name: ..............................................................

Bankruptcy and their obligations by:

Capacity: ......................... .... Age:..............

Address: ..............................................................

..............................................................

Witnessed by

Name: ..............................................................

Capacity: ......................... .... Age:..............

Address: ..............................................................

..............................................................

Date: .........................

Time: .........................

Place: ..............................................................

..............................................................

..............................................................

..............................................................

Part 3 - DETAILS OF OFFENCE(S)

Statute Contravened Details of offence

.............................................................. ..............................................................

.............................................................. ..............................................................

.............................................................. ..............................................................

.............................................................. ..............................................................

LOCUS/PLACE OF OFFENCE:

..............................................................

..............................................................

..............................................................
SUMMARY/SCHEDULE OF EVENTS *(see note 1)*
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

Part 4- WITNESSES

Forename: .................................................        Age: ..........        
Surname: ................................................. 
Date of involvement: ................................. 
Address: .............................................................. 
........................................................................................................................................

Tele. No. .................................

(Repeat for each witness)

LIST OF ATTACHED SUPPORTING DOCUMENTS *(see note 2)*
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

ANY ADDITIONAL INFORMATION
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
Note 1. SUMMARY/SCHEDULE: should include in chronological order, Actions or failures of debtor, details of what letters/warnings were sent to or documents served on the debtor and by whom, details of court actions, details of any explanation given by debtor and essentially, details of the effects of the debtors conduct.

Note 2. ATTACHED DOCUMENTS: should include copies any of the following documents, if they relate to the offence(s); signed questionnaire, letters to and from the debtor, court interlocutors/notes, signed statements from witnesses such as Sheriff Officers and any other relevant documents. (may include receipts or ownership documents etc.)
SUMMARY OF OFFENCES

Section 67 of The Bankruptcy (Scotland) Act 1985 (as amended) lists general offences which may be committed by the debtor. These are, in summary:

<table>
<thead>
<tr>
<th>Nature of offence</th>
<th>Act reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Making a false statement on assets or business or financial affairs;</td>
<td>section 67(1)</td>
</tr>
<tr>
<td>2 destruction, damage, concealment or removal of estate from Scotland or any document;</td>
<td>section 67(2)</td>
</tr>
<tr>
<td>3 failure to return to Scotland following a court order;</td>
<td>section 67(3)</td>
</tr>
<tr>
<td>4 falsification of a document and failure to report a falsification;</td>
<td>section 67(4,5)</td>
</tr>
<tr>
<td>5 gratuitous alienation or unfair preference by a person who is absolutely insolvent;</td>
<td>section 67(6)</td>
</tr>
<tr>
<td>6 pledge or disposal of property obtained on credit otherwise than in course of trade or business;</td>
<td>section 67(7)</td>
</tr>
<tr>
<td>7 obtaining credit to the extent of £500 or more without giving relevant information;</td>
<td>section 67(9)(a)</td>
</tr>
<tr>
<td>8 obtaining credit of any amount, where, at the time of obtaining credit the debtor had debts amounting to £1,000 or more, without giving relevant information;</td>
<td>section 67(9)(b)</td>
</tr>
</tbody>
</table>

Throughout the act there are listed various statutory offences which may be committed by the debtor:

<table>
<thead>
<tr>
<th>Nature of offence</th>
<th>Act reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Failure to inform the court of concurrent proceedings for bankruptcy or an analogous remedy.</td>
<td>section 10(6)</td>
</tr>
<tr>
<td>2 Failure to deliver a statement of assets and liabilities to the interim trustee or to omit or misstate a material fact.</td>
<td>section 19(3)</td>
</tr>
<tr>
<td>3 Failure to follow a direction or requirement of, or obstruction of, an interim trustee.</td>
<td>section 18(5)</td>
</tr>
<tr>
<td>4 Failure to notify the trustee of any assets acquired on a relevant date or of any substantial change in financial circumstances.</td>
<td>section 32(7)</td>
</tr>
<tr>
<td>5 Failure to attend for examination.</td>
<td>section 44(3)</td>
</tr>
<tr>
<td>6 Failure to inform of possible acquirenda.</td>
<td>section 15(9)</td>
</tr>
<tr>
<td>7 Failure to comply with an order of the sheriff on co-operation with a trustee.</td>
<td>section 64(3)</td>
</tr>
</tbody>
</table>
The following are offences not covered by the Act but are nevertheless reportable:

1. Common Law Fraud
2. Common Law Theft
3. Acting as a director or to promote a firm or manage a company without the leave of the court whilst an undischarged bankrupt.

The Company Director Disqualification Act 1986, section 11(1)
REPORT OF SUSPECTED OFFENCE(S)

AiB Ref. No.

Part 1 - DETAILS OF BANKRUPTCY

DEBTOR

Name: Male/Female

Address:

Date of Birth / Age:

Trading Name/Address: n/a

(If applicable) n/a

Date of Bankruptcy:

Court bankruptcy Awarded:

Agent/Trustee *:

Name

Address

(If Witness) Age:

Date of Appointment:

The following report is made in terms of Section 3(3) of The Bankruptcy (Scotland) Act 1985 (as amended).

Signed: ..........................................................

Capacity to Act: ............................................

Date: ....................

( * delete as appropriate)
Part 2 - INTIMATION TO DEBTOR

Debtor informed of the Bankruptcy and their obligations by:
Name: Capacity: Age:
Address:

Witnessed by:
Name: Capacity: Age:
Address:

Date:
Time:
Place:

Part 3 - DETAILS OF OFFENCE(S)

Statute Contravened Details of offence

LOCUS/PLACE OF OFFENCE:
(Full address)

SUMMARY/SCHEDULE OF EVENTS (see note 1)

For Example
15/6/2008 Debtor attended at office of …………. where he was informed of their obligations by the witnesses.
15/07/2008 Letter sent to debtor requesting him to return completed list of assets and liabilities.
01 & 15/8/2008 Further letters sent to debtor requesting completion and return of list of assets and liabilities.
30/8/08 Letter served personally on debtor by Sheriff Officers ,............ and…………….requesting him to attend a meeting at agent’s office on………..
10/9/08 Debtor fails to attend meeting.
27/09/07 A Court Order granted by Sheriff Court requiring the debtor to attend a meeting on 12/10/2008.

28/9/08 Copy of Court Order issued under terms of Section 64 served on debtor by Sheriff Officers ………………...

12/10/08 Debtor fails to attend meeting.

As a result of the debtors lack of cooperation the Trustee and its agent have been unable to establish the extent of their assets and liabilities. Additional costs have been incurred and time wasted in pursuing answers from the debtor. This may have an adverse effect on any return to creditors.

Part 4- WITNESSES

Forename:                        Age:
Surname:                        Date of involvement: 
Address:

Tele. No.

Forename:                        Age:
Surname:                        Date of involvement:
Tel. No.

Forename:                        Age:
Surname:                        Date of involvement:
Address:
Tel. No.

Forename:                        Age:
Surname:                        Date of involvement:
Address:
Tel. No.

LIST OF ATTACHED SUPPORTING DOCUMENTS (see note 2)

For example;

Copy of signed Statement of Undertaking
Copy of letter to debtor dated 15/7/08
Copy of letter to debtor dated 01/08/08
Copy of letter to debtor dated 15/8/08
Copy of letter dated 30/8/08 served by Sheriff Officers
Copy of service of letter by Sheriff Officers
Copy of Court Interlocutor dated 27/9/08
ANY ADDITIONAL INFORMATION
........................................................................................................................................
........................................................................................................................................
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Note 1. SUMMARY/SCHEDULE: should include in chronological order, Actions or failures of debtor, details of what letters/warnings were sent to or documents served on the debtor and by whom, details of court actions, details of any explanation given by debtor and essentially, details of the effects of the debtor’s conduct.

Note 2. ATTACHED DOCUMENTS: should include copies any of the following documents, if they relate to the offence(s); signed questionnaire, letters to and from the debtor, court interlocutors/notes, signed statements from witnesses such as Sheriff Officers and any other relevant documents. (may include receipts or ownership documents etc.)
The following standards have been produced and provided by Strathclyde Police and must be considered prior to submission of a suspected offence report to The Accountant in Bankruptcy.

- Police involvement should be seen as the very last option as practitioners should be “encouraging the debtor to comply”.

- Only if serious offences are discovered (disposal of assets, absconded, fraud etc.) should a formal enquiry be sent to the police giving details of all enquiries carried out to date (a diary as such).

- Use any civil course of action that could assist.

- Ensure that the debtors are aware of their obligations to contact the trustee and they acknowledge their understanding and the consequences of failure to comply.

- Record full contact details including that of Next of Kin or a relative to ensure proper communication channels are maintained.

- **Personal service of documents on the debtor as mandatory.**

- If no contact available - enquiry with neighbours / relatives / employment etc. to be recorded as part of a log (to show what attempts and enquiry has been made). All action should be considered with regard to compliance with the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)

- Consider standard database checks to be carried out to trace/identify the debtor (Experian, Equifax, Voters Roll, Local Authority etc.).
PART 1 - DETAILS OF BANKRUPTCY

Name of debtor:

Address of debtor:

Date of bankruptcy:

Bankruptcy awarded by:

Name of AiB Case Officer:

Address of Agent / Trustee* :

Tel. No. of Agent / Trustee* :

(* delete as appropriate)

The following application is made to request that The Accountant in Bankruptcy undertake an investigation to determine whether Bankruptcy Restrictions should be imposed on the above named debtor, in terms of Section 56A of The Bankruptcy (Scotland) Act 1985 (as amended).

Name:

Designation:

Organisation:

Date:

PART 2 - DETAILS OF GROUNDS FOR REQUESTING AN INVESTIGATION

| Section of 56(B)(2) of the Act | Description of conduct |
SUMMARY/SCHEDULE OF EVENTS

Provide in chronological order details of when the debtor was made aware of the award of bankruptcy, when and if they have signed a statement of their obligations, details of how any alleged misconduct, actions or failures of the debtor came to your attention and details of any correspondence / documentation sent to or received from the debtor, together with any explanations provided by the debtor.

Part 3 - LIST OF ATTACHED SUPPORTING DOCUMENTS

List and attach copies of any relevant correspondence sent to or received from the debtor or a third party, together with any other documents relevant to the investigation.

Part 4 - ANY ADDITIONAL INFORMATION

** Part 5 – For BRT USE ONLY **

Recommendation

No further action / Investigation to be implemented

Reason:

AiB Case Officer / Agent / Trustee notified of decision:

Signed:  Date:
Investigation Outcome

No further action / BRO granted / BRU accepted

Reason/ Details of BRO or BRU:

Signed: Date:
APPLICATION FOR APPROVAL OF ACTION ON HERITAGE

To: Accountant in Bankruptcy
1, Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA

(DX552090, Kilwinning 2)
(Fax: 0300 200 2601)

From: ………………………

For the attention of the: Adjudication and Supervision Team
(email: ast@aib.gov.uk)

Contact name: ………………………………………………………………………...

BANKRUPTCY OF ………………………………………………………………………

AiB reference: …………………… Trustee’s reference: ……………………

1. Trustee’s Proposal

I should be grateful if you would approve my proposed action, as detailed below, to dispose of the trustee’s interest in the property at:

Details of Proposal:

Please outline any communication there has been with the debtor and how they have been made aware of the outcome of the action that is to be taken? (Please attach copies of these communications).
2. Value of Property

(i) On what date was the property last valued?  
(ii) At what sum was the property last valued?  £ ……………………
(iii) What is the current redemption figure for each heritable security?

1  £………………………… as at ………………………………
2  £ …………………………as at ………………………………
3  £ …………………………as at ………………………………

Copies of the following documents must be enclosed:

Property Search; a professional property valuation report; Current redemption figure statement(s); Offers and/or negotiated settlement.

3. Consents (Please answer "YES" or "NO")

(i) [a] Are the subjects jointly owned? .................
    [b] If yes, does the joint owner wish to accept the offer? .................

(ii) [a] Are the subjects a family home within the meaning of section 40 of the 1985 Act? .................
    [b] If yes, do you have the necessary written consent to sell the debtor’s interest, as required by section 40? .................

(iii) Will the proposed action require the debtor to be removed from their property? .................

(Note: Where a family home is jointly owned and both parties have been sequestrated, each must consent to the sale of the other’s interest.)

(iv) Do you have the consent of each secured creditor to sell the property, under section 39(4)(a) of the 1985 Act? .................

(v) Do you have an agreement with the secured creditor(s) that all expenses of sale and conveyancing will form a first charge on the sale proceeds? .................
4. If you are selling the property on behalf of a secured creditor

You must:

- have an agreement with the secured lender that confirms your fee and all associated outlays and expenses, and states that these will form a first charge on the sale proceeds and not impact upon the other realisations and costs of the estate.

A copy of the terms and conditions of your agreement with the secured lender must be submitted with the Appendix L.

- detail how and why this sale will comply with both of the criteria specified in Section 3(8) of The Bankruptcy (Scotland) Act 1985 - be of financial benefit to the debtor’s estate and in the interests of the creditors.

5. Special Considerations

Please outline any communication there has been with the debtor and how they have been made aware of the outcome of the action that is to be taken?

If the outcome of your action will be that a debtor will be removed from their home either voluntarily or through eviction action:

- What, if any, information has been given to the debtor to assist them to find alternative accommodation?

- Have you issued statutory Form 22 to the debtor’s Local Authority?

- What alternative means were considered to realise the equity in the property, prior to seeking the removal of the debtor and why was this not deemed appropriate?

Trustee: .................................................................

Date..........................
APPENDIX M

Regulation 3(6)(g) FORM 26
Note to Trustee

This form of notice must be used to give notice to a local authority of an application made under section 40(1)(b) of The Bankruptcy (Scotland) Act 1985. This notice must be sent before commencing proceedings in accordance with section 40(3) of the 1985 Act.

Notice by
Trustee in Bankruptcy, or
Trustee under a Trust Deed

Of Application to Court to Obtain the Authority of the Sheriff to Sell or Dispose of Rights and Interests in a Debtor’s Family Home

To: ____________________________________________
(Name of local authority in whose area the property referred to in the application or proceedings is situated)

Take note that an application to court has been made as detailed below to obtain the authority of the Sheriff to sell or dispose of rights and interests in a debtor’s family home.

(Please give the following information)

<table>
<thead>
<tr>
<th>Name and address of the trustee:</th>
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<tr>
<td>Insert trustee’s name</td>
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<td>Insert trustee’s address</td>
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<tr>
<td>Town</td>
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<td>County</td>
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<td>Postcode</td>
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| Case Reference Number |  |

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<th>Name and address of the trustee’s legal representatives:</th>
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<td>Insert trustee’s legal representatives’ name</td>
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<tr>
<td>Insert trustee’s legal representatives’ address</td>
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<td>Town</td>
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**Contact telephone number of the trustee:**

**Name of debtor:**

**Name of occupier (if not the debtor):**

**Full postal address of property that is subject to proceedings:**

<table>
<thead>
<tr>
<th>Insert property address</th>
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<th>Town</th>
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**Recording/registration date of the standard security (if applicable):**

**Date of application:**

**Court in which application made:**

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APPENDIX N

(bankruptcy ref)

Trustee report for debtor discharge
Bankruptcy (Scotland) Act 1985 (as amended)
Section 54(4)

Report by

Insert Trustee’s name
Insert business address
Town
County
Postcode

in the bankruptcy of

I,
Insert debtor’s name
Insert debtor’s address
Town
County
Postcode

The trustee requests the Accountant in Bankruptcy:-

1. considers the report and my recommendation before deciding whether to discharge the debtor under section 54(2) of Bankruptcy (Scotland) Act 1985 (as amended).

In submitting this report, I confirm;

(i) 10 months have lapsed since the date of the bankruptcy award;

(ii) I have provided all relevant information on the debtor’s assets, liabilities, financial affairs and business affairs including the debtor’s conduct in relation to these assets; and

(iii) all relevant information on the bankruptcy and the debtor’s conduct in the bankruptcy.
2. I have provided a statement confirming the extent to which the debtor;
   (i) has complied with any debtor contribution order.
   (ii) co-operated with the trustee in accordance with section 64.
   (iii) complied with the statement of undertakings.
   (iv) made a full and fair surrender of the debtor’s estate.
   (v) made a full disclosure of all claims which the debtor is entitled to make against other persons and
   (vi) delivered to the trustee every document under the debtor’s control relating to the debtor’s estate, business or financial affairs.

3. I have carried out all of the trustee’s functions in accordance with section 3 of the Bankruptcy (Scotland) Act 1985 (as amended).

4. I have provided a copy of the report to the debtor and every known creditor advising them of their right to make representations to the Accountant in Bankruptcy in relation to the report before the expiry of 28 days beginning with the date on which the notice is given.

5. I would recommend that the debtor’s discharge:
   is granted under section 54(2) of the Bankruptcy (Scotland) Act 1985 (as amended).
   is not granted.

Signature of trustee _________________________

Date __________________
5. Report
(please use this section to provide evidence of the above)
Proposal by:

[Trustee name] of [company name]

in the bankruptcy of:

[debtor's name], [bankruptcy reference number]

Following an assessment of the above debtor's income and expenditure, I propose a Debtor Contribution Order is made by the Accountant in Bankruptcy to fix the amount at £(amount) per (payment interval) with a payment start date of (dd/mm/yyyy).

In making these proposals, I confirm that:

(i) not more than six weeks has passed since the granting of the bankruptcy award / my application for extending this timescale under section 63A of the Bankruptcy (Scotland) Act 1985 (as amended) has been granted*

(ii) the Common Financial Tool has been used to determine the debtor’s contribution amount, using evidence and supporting information provided by the debtor / based on information obtained and assessed by the trustee*

(iii) the debtor’s relevant obligations have been taken into consideration.

Signature of trustee __________________________

Date ___________________

(*delete as appropriate)
Report to the Accountant where no statutory meeting called
Bankruptcy (Scotland) Act 1985 (as amended) section 21B(1)

I, Insert insolvency practitioner’s name
Insert business address

Town
Country
Postcode

was appointed as trustee in the sequestration of

Insert debtor’s name
Insert debtor’s address

Town
Country
Postcode

by

* the Accountant in Bankruptcy
* the Sheriff at _______________________________ (insert name of court)
* on _______________________________ (insert date of appointment)

I report to the Accountant in Bankruptcy that I have intimated to the creditors my intention not to call a statutory meeting in terms of section 21 A(2) of the Bankruptcy (Scotland) Act 1985 (as amended).

I further report that I have not received a request or requests to call such a meeting from at least one quarter in value of the debtor’s creditors.

A copy of

* the trustee’s statement of the debtor’s affairs
* the trustee’s inventory and valuation of the debtor’s estate
* is attached

* was sent to the Accountant in Bankruptcy on ____________________ (insert date)

Signed ____________________________ (trustee)
Date ____________________

*delete as appropriate
Notes

The trustee in sequestration is required to report on the circumstances of the sequestration 7 days after the issue of a notice intimating to all creditors known to him that he does not intend to call a statutory meeting from at least one quarter in value of creditors.

The trustee should attach \textit{either}

(1) a statement of the debtor's affairs completed in accordance with section 20(1) of the Bankruptcy (Scotland) Act 1985 (as amended) or

(2) an inventory and evaluation of the debtor's estate completed in accordance with section 39(1) (c) of the Bankruptcy (Scotland) Act 1985 (as amended).

Unless such a document has previously been sent to the Accountant in bankruptcy in respect of the sequestration.
Debtor Contribution Order
Variation Form

Bankruptcy (Scotland) Act 2016

The trustee, (insert trustee’s name), in the bankruptcy of,

(Insert debtor’s name)
(Insert debtor’s address)
(Town)
(Postcode)

(“the debtor”)

varies the debtor’s contribution and requires the debtor to pay the sum of £(amount) per (payment interval) with a start date of (dd/mm/yy) and an end date of (dd/mm/yy) representing a period of (insert payment period) months which is the remainder of the payment period of the Debtor Contribution Order made under Bankruptcy (Scotland) Act 1985, as amended.

*As agreed a third person will pay the trustee a specified proportion of money due to the debtor by way of income in accordance with section 32A(6) of the Bankruptcy (Scotland) Act 1985, as amended. The details are as follows:

*(full details of arrangement)

Issued by Trustee (trustee name and address)
(dd/mm/yyyy)

*delete as appropriate
## TRUSTEE ACCOUNTS

Bankruptcy of  
AiB Ref No.

Receipts and Payments of Account of……… as Trustee, selling property on behalf of the secured lender.

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<thead>
<tr>
<th>From</th>
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### Estate Secured

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### Expenses

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### Balance

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Signed:  
(Trustee)  
Date: