



# Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

## *Application for sequestration*

### **9 Statement of undertakings**

(1) In section 2 of the 1985 Act (appointment and functions of the trustee in the sequestration), after subsection (7), insert—

“(8) The trustee must at the same time as notifying the debtor under subsection (7) (a) or (b), send to the debtor, for signature by the debtor, a statement of undertakings in the form prescribed.”.

(2) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—

(a) in subsection (2B), after paragraph (ba) (inserted by section 1(1)(a)), insert—

“(bb) the debtor has given a statement of undertakings (including an undertaking to pay to the trustee after the award of sequestration of the debtor’s estate an amount determined using the common financial tool),”, and

(b) after subsection (6A), insert—

“(6B) In the case of a debtor application, the debtor must send a statement of undertakings to the Accountant in Bankruptcy along with the application.”.

### **10 Debtor application: incomplete or inappropriate application**

Before section 12 of the 1985 Act (but after the italic cross-heading immediately preceding it), insert—

#### **“11A Debtor application: incomplete application**

(1) This section applies where a debtor application is made and the Accountant in Bankruptcy considers that—

- (a) the application is incomplete,
- (b) further information is required in relation to the application,

- (c) further evidence is required to substantiate any fact relevant to the application, or
  - (d) any fee or charge applicable to the application is outstanding.
- (2) The Accountant in Bankruptcy must specify by notice in writing to the debtor—
- (a) any further information which is to be provided,
  - (b) any further evidence which is to be provided, and
  - (c) any fee or charge to be paid.
- (3) Any information, evidence, fee or charge to be provided or paid under subsection (2) must be provided or paid within 21 days or such longer period as may be specified by the Accountant in Bankruptcy.
- (4) The Accountant in Bankruptcy may refuse to award sequestration if, after the expiry of the period referred to in subsection (3), the Accountant in Bankruptcy considers that—
- (a) the application remains incomplete,
  - (b) the debtor has provided insufficient information or evidence under subsection (2)(a) or (b), or
  - (c) any fee or charge applicable to the application remains outstanding.

#### **11B Refusal of debtor application: inappropriate application**

- (1) This section applies where a debtor application is made and the Accountant in Bankruptcy considers that an award of sequestration may not be appropriate in the circumstances of the case.
- (2) The Accountant in Bankruptcy must specify by notice in writing to the debtor—
- (a) the reason why the Accountant in Bankruptcy considers the application may not be appropriate, and
  - (b) any further information which is to be provided within 21 days or such longer period as may be specified by the Accountant in Bankruptcy.
- (3) The Accountant in Bankruptcy may refuse to award sequestration if, after the expiry of the period referred to in subsection (2), the Accountant in Bankruptcy remains of the view that an award of sequestration would be inappropriate in the circumstances of the case.”.

### **11 Sequestration: application by executor**

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor), for subsection (3), substitute—
- “(3) The sequestration of the estate of a deceased debtor is—
- (a) by debtor application made by the executor, or a person entitled to be appointed as executor, on the estate,
  - (b) on the petition of a qualified creditor, or qualified creditors, of the deceased debtor,
  - (c) on the petition of a temporary administrator,
  - (d) on the petition of a member State liquidator appointed in main proceedings, or
  - (e) on the petition of a trustee acting under a trust deed.”.

- (2) In section 6B of the 1985 Act (debtor application: provision of information)—
- (a) in subsection (1), after “application”, where it first occurs, insert “, other than an application under section 5(3)(a),”, and
  - (b) after subsection (2), insert—
    - “(2A) Where a debtor application is made by an executor under section 5(3)
      - (a) the executor must—
        - (a) state in the application whether or not the debtor’s centre of main interests was situated in the United Kingdom or in another member State, and
        - (b) state in the application whether or not the debtor possessed an establishment in the United Kingdom or in another member State.”.
- (3) In section 8A of the 1985 Act (further provisions relating to debtor applications)—
- (a) in subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”, and
  - (b) after subsection (2), insert—
    - “(2A) Any intromission by an executor with the deceased debtor’s estate after the period mentioned in subsection (2B) is deemed an intromission without a title unless, within that period, the executor—
      - (a) makes a debtor application under section 5(3)(a), or
      - (b) petitions for the appointment of a judicial factor to administer the estate.
    - (2B) The period referred to in subsection (2A) is the period of 12 months following the day on which the executor knew or ought to have known that the estate was absolutely insolvent and likely to remain so.”.
- (4) In section 12 of the 1985 Act (when sequestration is awarded)—
- (a) in subsection (1) after “application”, where it first occurs, insert “, other than an application under section 5(3)(a),”, and
  - (b) after that subsection, insert—
    - “(1B) Where a debtor application is made under section 5(3)(a) the Accountant in Bankruptcy must award sequestration forthwith if the Accountant is satisfied—
      - (a) that the application has been made in accordance with the provisions of this Act and any provision made under this Act, and
      - (b) that the provisions of subsection (6A) of section 5 have been complied with.”.

## 12 Concurrent proceedings for sequestration: recall

In section 10A of the 1985 Act (powers in relation to concurrent proceedings for sequestration or analogous remedy), after subsection (3) insert—

- “(3A) The Accountant in Bankruptcy must grant a recall of an award of sequestration if—
- (a) sequestration has been awarded by virtue of a debtor application, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) the sheriff directs the Accountant in Bankruptcy to dismiss the debtor application.
- (3B) The effect of the recall of an award of sequestration is, so far as practicable, to restore the debtor and any other person affected by the sequestration to the position the debtor or, as the case may be, the other person would have been in if the sequestration had not been awarded.
- (3C) A recall of an award of sequestration does not—
- (a) affect the interruption of prescription caused by—
    - (i) the presentation of the petition for sequestration,
    - (ii) the making of the debtor application, or
    - (iii) the submission of a claim under section 22 or 48,
  - (b) invalidate any transaction entered into before such recall by the interim trustee, or by the trustee, with a person acting in good faith, or
  - (c) affect a bankruptcy restrictions order which has not been annulled under section 56J(1)(a).
- (3D) Without delay after granting a recall of an award of sequestration under subsection (3A), the Accountant in Bankruptcy must send a certified copy of the decision to the Keeper of the Register of Inhibitions for recording in that register.”.