



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Discharge following sequestration

17 Discharge of debtor

For section 54 of the 1985 Act (automatic discharge of debtor) substitute—

“54 Discharge where Accountant in Bankruptcy not the trustee

- (1) This section applies where the Accountant in Bankruptcy is not the trustee.
- (2) The Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded by granting a certificate of discharge in the prescribed form.
- (3) Before deciding whether to discharge the debtor under subsection (2), the Accountant in Bankruptcy must—
 - (a) consider the report provided by the trustee under subsection (4), and
 - (b) take into account any representations received during the period mentioned in subsection (6)(b).
- (4) The trustee must prepare and send a report to the Accountant in Bankruptcy—
 - (a) without delay after the date which is 10 months after the date on which sequestration is awarded, and
 - (b) if the debtor is not otherwise discharged, before sending to the Accountant in Bankruptcy the documentation referred to in section 57(1)(b).
- (5) The report must include—
 - (a) information about—
 - (i) the debtor’s assets, liabilities, financial affairs and business affairs,
 - (ii) the debtor’s conduct in relation to those assets, liabilities, financial affairs and business affairs,
 - (iii) the sequestration, and

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- (iv) the debtor's conduct in the course of the sequestration,
 - (b) a statement of whether, in the opinion of the trustee, the debtor has as at the date of the report—
 - (i) 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, and
 - (c) a statement of whether the trustee has, as at the date that the report is sent to the Accountant in Bankruptcy, carried out all of the trustee's functions in accordance with section 3.
- (6) The trustee must, at the same time as sending a report to the Accountant in Bankruptcy under this section, give to the debtor and every creditor known to the trustee—
- (a) a copy of the report, and
 - (b) a notice informing the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the report before the expiry of the period of 28 days beginning with the day on which the notice is given.
- (7) A discharge under this section must not take effect before the end of the period of 14 days beginning with the day of notification of the decision.

54A Discharge where Accountant in Bankruptcy the trustee

- (1) This section applies where the Accountant in Bankruptcy is the trustee.
- (2) The Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded by granting a certificate of discharge in the prescribed form.
- (3) The Accountant in Bankruptcy must, as soon as is practicable after the date which is 12 months after the date on which sequestration is awarded—
 - (a) decide whether to discharge the debtor under subsection (2),
 - (b) notify the debtor and every creditor known to the Accountant in Bankruptcy of that decision, and
 - (c) send a report to those persons.
- (4) The report must give an account of—
 - (a) the debtor's assets, liabilities, financial affairs and business affairs,
 - (b) the debtor's conduct in relation to those assets, liabilities, financial affairs and business affairs,
 - (c) the sequestration, and
 - (d) the debtor's conduct in the course of the sequestration, including compliance with the statement of undertakings.
- (5) Subsection (6) applies where—

- (a) the Accountant in Bankruptcy refuses to discharge the debtor under subsection (2), and
 - (b) the debtor is not otherwise discharged.
- (6) The Accountant in Bankruptcy must, as soon as is practicable after the date which is 12 months after the date of the refusal—
- (a) decide whether to discharge or refuse to discharge the debtor under subsection (2),
 - (b) notify the debtor and every creditor known to the Accountant in Bankruptcy of that decision, and
 - (c) send a report giving an account of the matters mentioned in subsection (4) to those persons.
- (7) A discharge under this section must not take effect before the end of the period of 14 days beginning with the day of notification of the decision.

54B Discharge of debtor: review and appeal

- (1) The trustee or the debtor may apply to the Accountant in Bankruptcy for a review of a decision under section 54(2) or 54A(2) to refuse to discharge the debtor.
- (2) Any creditor may apply to the Accountant in Bankruptcy for a review of a decision under section 54(2) or 54A(2) to discharge the debtor.
- (3) An application under subsection (1) or (2) must be made before the end of the period of 14 days beginning with the day of notification of the decision under section 54(2) or, as the case may be, 54A(2).
- (4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by the Accountant in Bankruptcy.
- (5) If an application for a review under subsection (1) or (2) is made, the Accountant in Bankruptcy must—
- (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.”.

18 Repeal of discharge on composition

- (1) Section 56 of the 1985 Act (discharge on composition) is repealed.
- (2) Section 56K of the 1985 Act (effect of discharge on approval of offer of composition) is repealed.
- (3) Schedule 4 to the 1985 Act (discharge on composition) is repealed.

19 Deferral of discharge where debtor cannot be traced

After section 54C of the 1985 Act (inserted by section 7(1)), insert—

“54D Deferral of discharge where debtor cannot be traced

- (1) Subsection (2) applies where—
 - (a) the trustee, having made reasonable inquiries, is unable to ascertain the whereabouts of the debtor, and
 - (b) as a result is unable to carry out the trustee’s functions in accordance with section 3.
- (2) The trustee must—
 - (a) notify the debtor by sending to the last known address of the debtor a deferral notice in the prescribed form,
 - (b) give a deferral notice to every creditor known to the trustee, and
 - (c) where the trustee is not the Accountant in Bankruptcy, apply in the prescribed form to the Accountant in Bankruptcy for a deferral.
- (3) A deferral application under subsection (2)(c) must be made by the trustee—
 - (a) no earlier than the date which is 8 months after the date on which sequestration is awarded, and
 - (b) no later than the date which is 10 months after the date on which sequestration is awarded.
- (4) After receiving a deferral application, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 14 days beginning with the day on which the application is made, and
 - (b) if satisfied of the matters mentioned in subsection (5), issue a certificate deferring indefinitely the discharge of the debtor.
- (5) The matters are—
 - (a) that the trustee is unable to ascertain the whereabouts of the debtor, and
 - (b) it would not be reasonably practicable for the trustee to continue to search for the debtor.
- (6) Where the Accountant in Bankruptcy is the trustee and has given a deferral notice in accordance with subsection (2)(b), the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 14 days beginning with the day on which the deferral notice is given, and
 - (b) if satisfied that it would not be reasonably practicable to continue to search for the debtor, issue a certificate deferring indefinitely the discharge of the debtor.
- (7) Where a certificate is issued under subsection (4)(b) or (6)(b), the Accountant in Bankruptcy must make an appropriate entry in the register of insolvencies.

54E Debtor not traced: new trustee

- (1) This section applies where a certificate is issued under section 54D(4)(b).

- (2) The trustee may apply to the Accountant in Bankruptcy in the prescribed form for authority to resign office.
- (3) An application under subsection (2) must include details of every creditor known to the trustee.
- (4) An application under subsection (2) may not be made—
 - (a) if after the certificate is issued the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee,
 - (b) after the date which is 6 months after the date on which the certificate is awarded.
- (5) Where an application is made under subsection (2), the Accountant in Bankruptcy must issue to the trustee who made the application a notice in the prescribed form granting the application.
- (6) Where a notice is issued under subsection (5)—
 - (a) the Accountant in Bankruptcy is deemed to be the trustee,
 - (b) the Accountant in Bankruptcy must notify every creditor known to the Accountant in Bankruptcy that the Accountant in Bankruptcy is deemed to be the trustee,
 - (c) 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, and
 - (d) subsections (6) to (8) of section 28 apply in relation to the appointment of the Accountant in Bankruptcy as the new trustee as they apply in relation to the appointment of a new trustee under that section.

54F Debtor not traced: subsequent debtor contact

- (1) This section applies where—
 - (a) a certificate is issued under section 54D(4)(b) or (6)(b), and
 - (b) the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee.
- (2) Where the Accountant in Bankruptcy is the trustee, the Accountant in Bankruptcy may discharge the debtor at any time after the date which is 12 months after the date on which—
 - (a) the whereabouts of the debtor were ascertained, or
 - (b) the debtor made contact with the trustee.
- (3) Where the Accountant in Bankruptcy is not the trustee, the trustee must prepare and send a report to the Accountant in Bankruptcy without delay after the date which is 10 months after the earlier of the date on which—
 - (a) the whereabouts of the debtor were ascertained by the trustee, or
 - (b) the debtor made contact with the trustee.
- (4) If the trustee sends a report to the Accountant in Bankruptcy under subsection (3)—
 - (a) the report must include the matters included in a report sent to the Accountant in Bankruptcy in accordance with subsection (5) of section 54, and

- (b) subsection (6) of that section applies to the report as it applies to a report sent in accordance with subsection (4) of that section.
- (5) After receiving a report under subsection (3), the Accountant in Bankruptcy may discharge the debtor by granting a certificate of discharge in the prescribed form.
- (6) Before deciding whether to discharge the debtor under subsection (5), the Accountant in Bankruptcy must—
 - (a) consider the report prepared by the trustee under subsection (3), and
 - (b) take into account any representations received during the period mentioned in subsection (6) of section 54 (as applied in accordance with subsection (4)).
- (7) A discharge under subsection (2) or (5) must not take effect on a date before the end of the period of 14 days beginning with the day of notification of the decision.
- (8) A discharge under subsection (2) or (5) is deemed for the purposes of section 55 to have been given under section 54(2).

54G Subsequent debtor contact: review and appeal

- (1) The debtor may apply to the Accountant in Bankruptcy for a review of a decision under section 54F(2) or (5) to refuse to discharge the debtor.
- (2) Any creditor may apply to the Accountant in Bankruptcy for a review of a decision under section 54F(2) or (5) to discharge the debtor.
- (3) An application under subsection (1) or (2) must be made before the end of the period of 14 days beginning with the day of notification of the decision under section 54F(2) or, as the case may be, 54F(5).
- (4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by the Accountant in Bankruptcy.
- (5) If an application for a review under subsection (1) or (2) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (6) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (5)(b) before the end of the period of 14 days beginning with the date of the decision.”.

20 Unclaimed dividends and unapplied balances

In section 57 of the 1985 Act (discharge of trustee)—

- (a) in subsection (1)—
 - (i) for paragraph (a), substitute—

- “(a) must pay to the Accountant in Bankruptcy any unclaimed dividends and unapplied balances,”, and
 - (ii) in paragraph (b), the words “and a receipt for the deposit of the unclaimed dividends and unapplied balances” are repealed, and
 - (b) after subsection (1A) (inserted by section 23(1)(b)), insert—
 - “(1B) The Accountant in Bankruptcy must deposit any unclaimed dividends and any unapplied balances paid to the Accountant in Bankruptcy under subsection (1)(a) in an appropriate bank or institution.”.

21 Assets discovered after trustee discharge: appointment of trustee

After section 58A of the 1985 Act, insert—

“58B Assets discovered after trustee discharge: appointment of trustee

- (1) This section applies where, after the trustee’s discharge under section 57 or 58A but before the expiry of the period of 5 years from the date of sequestration, the trustee or the Accountant in Bankruptcy becomes aware of any newly identified estate with a value of not less than £1000 (or such other sum as may be prescribed).
- (2) In this section, “newly identified estate” means any part of the debtor’s estate which—
 - (a) vested in the trustee in accordance with section 31 or 32, and
 - (b) was not, before the trustee was discharged, known to the trustee.
- (3) The Accountant in Bankruptcy may—
 - (a) in the case where the trustee was discharged under section 57—
 - (i) on the application of the trustee who was discharged, reappoint that person as trustee on the debtor’s estate, or
 - (ii) appoint the Accountant in Bankruptcy as trustee on the debtor’s estate,
 - (b) in the case where the Accountant in Bankruptcy was discharged under section 58A, reappoint the Accountant in Bankruptcy as trustee on the debtor’s estate.
- (4) The Accountant in Bankruptcy may make an appointment or reappointment under subsection (3) only if, in the opinion of the Accountant in Bankruptcy, the value of the newly identified estate is likely to exceed the costs of—
 - (a) the appointment or reappointment, and
 - (b) the recovery, management, realisation and distribution of the newly identified estate.
- (5) Where the trustee was discharged under section 57 and applies for reappointment under subsection (3)(a)(i), the discharged trustee must provide to the Accountant in Bankruptcy the information mentioned in subsection (8) (a) to (c).
- (6) Where the trustee was discharged under section 57 and does not apply for reappointment under subsection (3)(a)(i), the discharged trustee must—

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- (a) provide to the Accountant in Bankruptcy details of any newly identified estate that the discharged trustee becomes aware of, where that estate has a value which is not less than the value mentioned in subsection (1), and
 - (b) if requested by the Accountant in Bankruptcy, provide to the Accountant in Bankruptcy the information mentioned in subsection (8) (b) and (c).
- (7) Where the Accountant in Bankruptcy was discharged under section 58A, the Accountant in Bankruptcy must record and consider the information mentioned in subsection (8).
- (8) The information is—
- (a) the estimated value of the newly identified estate,
 - (b) the reason why the newly identified estate forms part of the debtor's estate,
 - (c) the reason why the newly identified estate was not recovered,
 - (d) the estimated outlays and remuneration of the trustee following an appointment or reappointment under subsection (3), and
 - (e) the likely distribution under section 51 following an appointment or reappointment under subsection (3).
- (9) This section is without prejudice to any other right to take action following the discharge of the trustee.

58C Assets discovered after trustee discharge: notice

- (1) The Accountant in Bankruptcy must notify the debtor and any other person the Accountant in Bankruptcy considers to have an interest—
- (a) where an application is made under section 58B(3)(a)(i), and
 - (b) where the Accountant in Bankruptcy proposes to make an appointment or reappointment under section 58B(3)(a)(ii) or (b).
- (2) A notice under subsection (1) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed appointment or reappointment before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (3) Before making an appointment or reappointment under section 58B, the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (4) If the Accountant in Bankruptcy makes an appointment or reappointment under section 58B, the Accountant in Bankruptcy must as soon as is practicable notify the debtor of the appointment or reappointment.
- (5) A notice under subsection (4) must include information in relation to the debtor's duties to co-operate with the trustee under section 64.

58D Assets discovered after trustee discharge: appeal

Where the Accountant in Bankruptcy 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.”