



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*Status: This is the original version (as it was originally enacted).*

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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.”.