



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Discharge following sequestration

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

Status: This is the original version (as it was originally enacted).

- (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—
- (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.”