



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Advice and education

1 Sequestration of estate of living debtor: money advice

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
- (a) in subsection (2B), after paragraph (b), insert—
 - “(ba) the debtor has obtained the advice of a money adviser in accordance with section 5C(1),”, and
 - (b) after subsection (4B), insert—
 - “(4BA) A debtor application must—
 - (a) include a declaration by the money adviser who provided the advice referred to in section 5C(1) that such advice has been given, and
 - (b) specify the name and address of the money adviser.”.
- (2) After section 5B of the 1985 Act, insert—

“5C Money advice

- (1) An application for the sequestration of a living debtor’s estate may not be made unless the debtor has obtained from a money adviser—
- (a) advice on the debtor’s financial circumstances,
 - (b) advice on the effect of the proposed sequestration of the debtor’s estate,
 - (c) advice on the preparation of the application, and
 - (d) advice on such other matters as may be prescribed.
- (2) In this Act, “money adviser” means a person who—
- (a) is not an associate of the debtor, and
 - (b) is of a prescribed description or falls within a prescribed class.”.

2 Financial education for debtor

After section 43A of the 1985 Act, insert—

“43B Financial education

- (1) The trustee must notify a living debtor that the debtor is required to undertake a prescribed course of financial education (a “financial education course”) specified by the trustee if, in the opinion of the trustee—
 - (a) any of the circumstances mentioned in subsection (2) apply, and
 - (b) undertaking the course would be appropriate for the debtor.
- (2) The circumstances are—
 - (a) in the period of 5 years ending on the date on which the sequestration of the debtor’s estate was awarded—
 - (i) the debtor’s estate was sequestrated,
 - (ii) the debtor granted a protected trust deed,
 - (iii) an analogous remedy (within the meaning of section 10(7)) was in force in respect of the debtor, or
 - (iv) the debtor participated in a debt management programme under which the debtor made regular payments (including in particular a programme approved in accordance with section 2 of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#)),
 - (b) the debtor is subject to, or under investigation with a view to an application being made for, a bankruptcy restrictions order,
 - (c) the trustee considers that the pattern of the debtor’s behaviour, whether before or after the award of sequestration, is such that the debtor would benefit from a financial education course,
 - (d) the debtor agrees to undertake a financial education course.
- (3) The trustee must decide whether to issue a notification under subsection (1)—
 - (a) before the end of the period of 6 months beginning with the date of award of sequestration, and
 - (b) in a case where section 54F applies, as soon as reasonably practicable after the trustee ascertains the whereabouts of the debtor or the debtor makes contact with the trustee.
- (4) A debtor must not be required to undertake or, as the case may be, complete the financial education course specified by the trustee if, in the opinion of the trustee—
 - (a) the debtor is unable to participate in the course as a result of the debtor’s health (including by reason of disability or physical or mental illness), or
 - (b) the debtor has completed a financial education course in the period of 5 years ending on the date on which the sequestration of the debtor’s estate was awarded.
- (5) Regulations under subsection (1) may in particular—
 - (a) prescribe the content, format and method of delivery of a course,
 - (b) prescribe different courses for different circumstances,

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

- (c) make provision for particular courses to be specified by a trustee where particular circumstances in subsection (2) apply.”