

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Discharge following sequestration

Section 21 – Assets discovered after trustee discharge: appointment of trustee

44. This section inserts 3 new sections after section 58A of the 1985 Act. The new section 58B enables AiB to reappoint the previous trustee in a sequestration where after the *trustee's* discharge, but before the expiry of 5 years from the date of sequestration, assets valued at £1,000 or more are identified that would have vested in the trustee prior to the debtor's discharge. Some assets which come to light are claimable by the trustee for creditors after the discharge of the debtor. To ensure cases are not reopened without good cause under this procedure, section 58B provides that the value of the newly identified estate should be greater than the costs for seeking re-appointment as trustee, and the potential costs for realising the identified new asset (section 58B(4)). In order to reopen the sequestration under this procedure, the trustee would have to demonstrate:
- the estimated value of the newly identified estate;
 - the reason why the newly identified estate forms part of the debtor's estate; and
 - the reason why the asset was not recovered.
45. Section 58C creates requirements that the debtor and any other relevant parties should be informed that the trustee (or AiB) intends to seek reappointment as soon as practicable after reappointment, and that the debtor is reminded of the requirement to cooperate with the trustee in any investigation or realisation of assets.
46. Section 58D enables the debtor or other relevant parties to appeal to the sheriff against the reappointment, within 14 days of notification if they disagree with AiB's decision whether to reappoint a trustee. Should assets be identified more than 12 months after discharge, the trustee will only be able to be reappointed with agreement of the sheriff, as under the existing law.