



# Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

## *Discharge following sequestration*

### **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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.”.