



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 11

#### DISCHARGE

##### *Discharge of debtor*

#### **141 Deferral of discharge where debtor cannot be traced**

- (1) Subsection (2) applies where the trustee—
  - (a) 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 50.
- (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 AiB, apply in the prescribed form to AiB for a deferral.
- (3) Any 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, AiB must—
  - (a) take into account any representations made by an interested person within 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 discharge indefinitely.
- (5) The matters are—
  - (a) that the trustee is unable to ascertain the whereabouts of the debtor, and

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**Changes to legislation:** Bankruptcy (Scotland) Act 2016, Section 141 is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- (b) it would not be reasonably practicable for the trustee to continue to search for the debtor.
- (6) Where AiB is the trustee and has given a deferral notice in accordance with subsection (2)(b), AiB must—
- (a) take into account any representations made by an interested person within 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 discharge indefinitely.
- (7) Where a certificate is issued under subsection (4)(b) or (6)(b), AiB must make an appropriate entry in the register of insolvencies.

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**Commencement Information**

**II** [S. 141](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)