



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Sequestration where debtor has few assets

5 Debtor application

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
- (a) in subsection (2)(a), after “subsection” insert “(2ZA) or”, and
 - (b) after subsection (2), insert—

“(2ZA) This subsection applies to the debtor where—

 - (a) the debtor—
 - (i) has been assessed by the common financial tool as requiring to make no debtor’s contribution, or
 - (ii) has been in receipt of a prescribed payment for a period of at least 6 months ending with the day on which the application is made,
 - (b) the total amount of the debtor’s debts (including interest) at the date the debtor application is made is—
 - (i) not less than £1500 or such other sum as may be prescribed, and
 - (ii) no more than £17000 or such other sum as may be prescribed,
 - (c) the total value of the debtor’s assets (leaving out of account any liabilities) on the date the debtor application is made does not exceed £2000 or such other amount as may be prescribed,
 - (d) the value of a single asset of the debtor does not exceed £1000 or such other amount as may be prescribed,
 - (e) the debtor does not own land,
 - (f) within the prescribed period, the debtor has been granted a certificate for sequestration of the debtor’s estate in accordance with section 5B,
 - (g) in the period of 10 years ending on the day before the day on which the debtor application is made or such other period as

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may be prescribed no award of sequestration has been made against the debtor in pursuance of an application made by the debtor by virtue of this subsection, and

- (h) in the period of 5 years ending on the day before the day on which the debtor application is made no award of sequestration has been made against the debtor in pursuance of—
 - (i) an application made by the debtor other than by virtue of this subsection, or
 - (ii) a petition.

(2ZB) For the purposes of subsection (2ZA)(c) and (d)—

- (a) any property of the debtor is not to be regarded as an asset if, under any provision of this or any other enactment, it would be excluded from vesting in the Accountant in Bankruptcy as trustee,
- (b) if the debtor reasonably requires the use of a vehicle, any vehicle owned by the debtor the value of which does not exceed £3000 or such other amount as may be prescribed is not to be regarded as an asset,
- (c) any other property of the debtor that is of a prescribed type is not to be regarded as an asset.

(2ZC) For the purposes of subsection (2ZA)(c) and (d), the Scottish Ministers may by regulations make provision about how the value of the debtor's assets is to be determined.

(2ZD) The Scottish Ministers may by regulations modify subsection (2ZA).

(2ZE) Schedule A1 to this Act makes further provision about the application of certain provisions of this Act in relation to a debtor to whom subsection (2ZA) applies.”.

- (2) Before Schedule 1 to the 1985 Act, insert the Schedule A1 set out in schedule 1 to this Act.

6 Circumstances where Accountant in Bankruptcy appointed as trustee

In section 2 of the 1985 Act (appointment and functions of trustee in sequestration)—

- (a) in subsection (1A), for “(1C)” substitute “(1D)”, and
- (b) after subsection (1C) insert—

“(1D) The Accountant in Bankruptcy is not to make an appointment under subsection (1A) where—

- (a) the debtor application is made by a debtor to whom section 5(2ZA) applies, and
- (b) the Accountant in Bankruptcy awards sequestration of the debtor's estate.”.

7 Discharge, conditions etc.

- (1) After section 54B of the 1985 Act (inserted by section 17), insert—

“54C Debtor to whom section 5(2ZA) applies: discharge

- (1) Where section 5(2ZA) applies to a debtor, the debtor is discharged on the date which is 6 months after the date on which sequestration is awarded.
 - (2) A debtor may, following a discharge, apply to the Accountant in Bankruptcy for a certificate of discharge in the prescribed form.”.
- (2) After section 55 of the 1985 Act, insert—

“55A Discharge under section 54C: conditions

- (1) This section applies where a debtor is discharged under section 54C.
- (2) During the relevant period the debtor must comply with the condition in subsection (3) before the debtor, either alone or jointly with another person, obtains credit—
 - (a) to the extent of £2000 (or such other sum as may be prescribed) or more, or
 - (b) of any amount where, at the time of obtaining credit, the debtor has debts amounting to £1000 (or such other sum as may be prescribed) or more.
- (3) The condition is that the debtor must inform the person who is providing credit to the debtor (or, as the case may be, jointly to the debtor and another person) that the debtor is required to comply with the conditions in this section.
- (4) During the relevant period, the debtor must not engage (whether directly or indirectly) in a business under a name other than that to which the discharge relates unless the debtor complies with the condition in subsection (5).
- (5) The condition is that the debtor must inform any person with whom the debtor enters into any business transaction of the name of the business to which the discharge relates.
- (6) In this section, “relevant period” means the period of 6 months beginning with the date of discharge.

55B Section 55A: sanctions

- (1) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 55A, that section applies in relation to the debtor as if the relevant period were the period of 12 months beginning with the date of discharge of the debtor.
- (2) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 55A during the period when the section applies in relation to the debtor by virtue of subsection (1), the debtor commits an offence.
- (3) A debtor who is guilty of an offence under subsection (2) is liable on summary conviction to—
 - (a) a fine not exceeding the statutory maximum,
 - (b) imprisonment for—

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- (i) a term not exceeding 3 months, or
 - (ii) a term not exceeding 6 months, if the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, or
 - (c) both such fine and imprisonment.
- (4) A debtor who is guilty of an offence under subsection (2) is liable on conviction on indictment to—
- (a) a fine,
 - (b) imprisonment for a term not exceeding 2 years, or
 - (c) both such fine and imprisonment.”.