



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 11

DISCHARGE

Discharge of debtor

137 Discharge of debtor where Accountant in Bankruptcy not trustee

- (1) This section applies where AiB is not the trustee.
- (2) AiB may, by granting a certificate of discharge in the prescribed form, discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded.
- (3) Before deciding whether to discharge the debtor under subsection (2), AiB must—
 - (a) consider the report provided by the trustee under subsection (4), and
 - (b) take into account any representations received during the 28 days mentioned in subsection (6)(b).
- (4) The trustee must prepare and send a report to AiB—
 - (a) without delay after the date which is 10 months after the date on which sequestration is awarded, and
 - (b) if the debtor is not otherwise discharged, before sending to AiB the documentation referred to in section 148(1)(b)(i).
- (5) The report must include—
 - (a) information about—
 - (i) the debtor's assets, liabilities, financial affairs and business affairs,
 - (ii) the debtor's conduct in relation to those assets, liabilities and affairs,
 - (iii) the sequestration, and
 - (iv) the debtor's conduct in the course of the sequestration,
 - (b) a statement of whether, in the opinion of the trustee, the debtor has as at the date of the report—
 - (i) complied with any debtor contribution order,
 - (ii) co-operated with the trustee in accordance with section 215,

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- (iii) complied with the statement of undertakings,
 - (iv) made a full and fair surrender of the debtor's estate,
 - (v) made a full disclosure of all claims which the debtor is entitled to make against any other persons, and
 - (vi) delivered to the trustee every document under the debtor's control relating to the debtor's estate, financial affairs or business affairs, and
 - (c) a statement of whether the trustee has, as at the date that the report is sent to AiB, carried out all of the trustee's functions in accordance with section 50.
- (6) The trustee must, at the same time as sending a report to AiB under this section, give to the debtor and to every creditor known to the trustee—
- (a) a copy of the report, and
 - (b) a notice informing the recipient that the recipient has a right to make representations to AiB in relation to the report within 28 days beginning with the day on which the notice is given.
- (7) A discharge under this section is not to take effect before the expiry of 14 days beginning with the day of notification of the decision.

138 Discharge of debtor where Accountant in Bankruptcy trustee

- (1) This section applies where AiB is the trustee.
- (2) AiB may, by granting a certificate of discharge in the prescribed form, discharge the debtor at any time after the date which is 12 months after the date on which sequestration is awarded.
- (3) AiB must, as soon as practicable after the date which is 12 months after the date on which sequestration is awarded—
- (a) decide whether to discharge the debtor under subsection (2),
 - (b) notify the debtor and every creditor known to AiB of that decision, and
 - (c) send a report to those persons.
- (4) The report must give an account of—
- (a) the debtor's assets, liabilities, financial affairs and business affairs,
 - (b) the debtor's conduct in relation to those assets, liabilities and affairs,
 - (c) the sequestration, and
 - (d) the debtor's conduct in the course of the sequestration, including compliance with the statement of undertakings.
- (5) Subsection (6) applies where—
- (a) AiB refuses to discharge the debtor under subsection (2), and
 - (b) the debtor is not otherwise discharged.
- (6) AiB must, as soon as practicable after the date which is 12 months after the date of the refusal—
- (a) decide whether to discharge or refuse to discharge the debtor under subsection (2),
 - (b) notify the debtor and every creditor known to AiB of that decision, and
 - (c) send a report giving an account of the matters mentioned in subsection (4) to those persons.

- (7) Discharge under this section is not to take effect before the expiry of 14 days beginning with the day of notification of the decision to discharge.

139 Discharge of debtor: review and appeal

- (1) The trustee or the debtor may apply to AiB for a review of a decision to refuse to discharge the debtor under section 137(2) or 138(2).
- (2) Any creditor may apply to AiB for a review of a decision to discharge the debtor under section 137(2) or 138(2).
- (3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of the notification of the decision in question.
- (4) If an application is made under subsection (2), the discharge is suspended until the determination of the review by AiB.
- (5) If an application is made under subsection (1) or (2), AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the decision within 28 days beginning with that day.
- (6) The debtor, the trustee or any creditor may appeal to the sheriff, against any decision of AiB under subsection (5)(b), within 14 days beginning with the day of the decision.

140 Discharge of debtor to whom section 2(2) applies

- (1) Where section 2(2) 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 discharge, apply to AiB for a certificate of discharge in the prescribed form.

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
 - (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.

142 Debtor not traced: new trustee

- (1) This section applies where a certificate is issued under section 141(4)(b).
- (2) The trustee may apply to AiB, 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, or
 - (b) after the date which is 6 months after that on which the certificate is issued.
- (5) Where an application is made under subsection (2), AiB 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) AiB is deemed to be the trustee,
 - (b) AiB must notify every creditor known to AiB that AiB is deemed to be the trustee,
 - (c) the former trustee is not entitled to recover, other than by a claim in the final distribution of the debtor's estate, outlays and remuneration payable under sections 132 and 133, and
 - (d) subsections (9) to (13) of section 69 apply in relation to the appointment of AiB as the new trustee as they apply in relation to the appointment of a new trustee under that section.

143 Debtor not traced: subsequent debtor contact

- (1) This section applies where—

- (a) a certificate is issued under section 141(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 AiB is the trustee, AiB may discharge the debtor at any time after the date which is 12 months after that on which—
- (a) the whereabouts of the debtor were ascertained, or
 - (b) the debtor made contact with the trustee.
- (3) Where AiB is not the trustee, the trustee must prepare and send a report to AiB without delay after the date which is 10 months after the earlier of—
- (a) the date on which the whereabouts of the debtor were ascertained by the trustee, and
 - (b) the date on which the debtor made contact with the trustee.
- (4) If the trustee sends a report to AiB under subsection (3)—
- (a) the report must include the matters which, in a report sent to AiB, are included in accordance with subsection (5) of section 137, and
 - (b) subsection (6) of that section applies to a report sent under this section as it applies to a report sent in accordance with subsection (4) of that section.
- (5) After receiving a report under subsection (3), AiB 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), AiB must—
- (a) consider the report prepared under subsection (3), and
 - (b) take into account any representations received during the 28 days mentioned in subsection (6)(b) of section 137 (as applied in accordance with subsection (4)).
- (7) Discharge under subsection (2) or (5) is not to take effect before the expiry of 14 days beginning with the day of notification of the decision to discharge.
- (8) Discharge under subsection (2) or (5) is deemed for the purposes of section 145 to have been given under section 137(2).

144 Subsequent debtor contact: review and appeal

- (1) The debtor may apply to AiB for a review of a decision under section 143(2) or (5) to refuse to discharge the debtor.
- (2) Any creditor may apply to AiB for a review of a decision under section 143(2) or (5) to discharge the debtor.
- (3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of notification of the decision in question.
- (4) If an application for a review under subsection (2) is made, the discharge is suspended until the determination of that review by AiB.
- (5) If an application for a review under subsection (1) or (2) is made, AiB must—
 - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

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- (b) confirm or revoke the decision within 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 AiB under subsection (5)(b) within 14 days beginning with the day of the decision.

145 Effect of discharge under section 137, 138 or 140

- (1) On the discharge of the debtor under section 137, 138 or 140 the debtor is discharged of all debts and obligations contracted by the debtor, or for which the debtor was liable, at the date of sequestration.
- (2) Subsection (1) is subject to subsections (3) and (5).
- (3) The debtor is not discharged by virtue of subsection (1) from—
 - (a) any liability to pay a fine or other penalty due to the Crown,
 - (b) any liability to pay a fine imposed in a justice of the peace court (or a district court),
 - (c) any liability under a compensation order (within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995,
 - (d) any liability to forfeiture of a sum of money deposited in court under section 24(6) of the Criminal Procedure (Scotland) Act 1995,
 - (e) any liability incurred by reason of fraud or breach of trust,
 - (f) any obligation to pay—
 - (i) aliment, or any sum of an alimentary nature, under any enactment or rule of law, or
 - (ii) any periodical allowance payable on divorce by virtue of a court order or under an obligation, or
 - (g) the obligation imposed on the debtor by section 215.
- (4) The obligations mentioned in paragraph (f) of subsection (3) do not include—
 - (a) aliment, or a periodical allowance, which could be included in the amount of a creditor's claim under paragraph 2 of schedule 2, or
 - (b) child support maintenance within the meaning of the Child Support Act 1991 which was unpaid in respect of any period before the date of sequestration of—
 - (i) any person by whom it was due to be paid, or
 - (ii) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.
- (5) The discharge of the debtor under section 137, 138 or 140 does not affect any right of a secured creditor for an obligation in respect of which the debtor has been discharged, to enforce the security in respect of that obligation.
- (6) In subsection (3)(a), the reference to a fine or other penalty due to the Crown includes a reference to a confiscation order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.
- (7) Nothing in this section affects regulations in relation to which section 73B of the Education (Scotland) Act 1980 (regulations relating to student loans) applies.

146 Discharge under section 140: conditions

- (1) This section applies where a debtor is discharged under section 140.
- (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 £2,000 (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 £1,000 (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 6 months beginning with the date of discharge.

147 Section 146: sanctions

- (1) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 146, that section applies in relation to the debtor as if the relevant period were the 12 months beginning with the date of discharge.
- (2) If a debtor fails to comply with the requirement imposed by subsection (2) or (4) of section 146 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 commits an offence under subsection (2) is liable on summary conviction—
 - (a) to a fine not exceeding the statutory maximum,
 - (b) to imprisonment for—
 - (i) a term not exceeding 3 months, or
 - (ii) if the person has previously been convicted of an offence inferring dishonest appropriation of property (or an attempt at such appropriation), a term not exceeding 6 months, or
 - (c) both to such fine and to such imprisonment.
- (4) A debtor who commits an offence under subsection (2) is liable on conviction on indictment—
 - (a) to a fine,
 - (b) to imprisonment for a term not exceeding 2 years, or
 - (c) both to such fine and to such imprisonment.