



# Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

*[<sup>F1</sup> Bankruptcy restrictions orders and undertakings*

## Textual Amendments

- F1** Ss. 56A-56K and preceding cross-heading inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 2(1)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)(a)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

## **[<sup>F2</sup>56A Bankruptcy restrictions order**

- (1) Where sequestration of a living debtor's estate is awarded, an order (to be known as a "bankruptcy restrictions order") in respect of the debtor may be made by the—
  - (a) Accountant in Bankruptcy, or
  - (b) the sheriff.
- (2) A bankruptcy restrictions order may be made by the sheriff only on the application of the Accountant in Bankruptcy.
- (3) The Accountant in Bankruptcy must notify the debtor where the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order.
- (4) A notice under subsection (3) must inform the debtor that the debtor has a right to make representations to the Accountant in Bankruptcy in relation to the proposed bankruptcy restrictions order.
- (5) Before making a bankruptcy restrictions order the Accountant in Bankruptcy must take into account any representations made by the debtor.]

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### Textual Amendments

**F2** S. 56A substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), ss. **33(1)**, [57\(2\)](#); [S.S.I. 2014/261](#), art. 3 (with arts. 4-7, 12) (as amended by [S.S.I. 2015/54](#), art. 2)

## 56B Grounds for making order

[<sup>F3</sup>(1) A bankruptcy restrictions order must be made if the Accountant in Bankruptcy, or as the case may be, the sheriff thinks it appropriate having regard to the conduct of the debtor (whether before or after the date of sequestration).]

(2) The [<sup>F4</sup>Accountant in Bankruptcy, or as the case may be, the] sheriff shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—

- (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning 2 years before the date of presentation of the petition for sequestration or, as the case may be, the date the debtor application was made and ending with the date of the application for a bankruptcy restrictions order;
- (b) failing to produce records of that kind on demand by—
  - (i) the Accountant in Bankruptcy;
  - (ii) the interim trustee; or
  - (iii) the trustee;
- [<sup>F5</sup>(ba) failing to supply accurate information to an authorised person for the purpose of the granting under section 5B of a certificate for sequestration of the debtor's estate,]
- (c) making a gratuitous alienation or any other alienation for no consideration or for no adequate consideration which a creditor has, under any rule of law, right to challenge;
- (d) creating an unfair preference or any other preference which a creditor has, under any rule of law, right to challenge;
- (e) making an excessive pension contribution;
- (f) failing to supply goods or services which were wholly or partly paid for which gave rise to a claim submitted by a creditor under section 22 or 48 of this Act;
- (g) trading at a time before the date of sequestration when the debtor knew or ought to have known that he was to be unable to meet his debts;
- (h) incurring, before the date of sequestration, a debt which the debtor had no reasonable expectation of being able to pay;
- (j) failing to account satisfactorily to—
  - (i) the sheriff;
  - (ii) the Accountant in Bankruptcy;
  - (iii) the interim trustee; or
  - (iv) the trustee,
 for a loss of property or for an insufficiency of property to meet his debts;
- (k) carrying on any gambling, speculation or extravagance which may have materially contributed to or increased the extent of his debts or which took place between the date of presentation of the petition for sequestration or, as the case may be, the date the debtor application was made and the date on which sequestration is awarded;

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- (l) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his debts;
  - (m) fraud or breach of trust;
  - (n) failing to co-operate with—
    - (i) the Accountant in Bankruptcy;
    - (ii) the interim trustee; or
    - (iii) the trustee.
- (3) The [<sup>F6</sup>Accountant in Bankruptcy, or as the case may be, the] sheriff shall also, in particular, consider whether the debtor—
- (a) has previously been sequestrated; and
  - (b) remained undischarged from that sequestration at any time during the period of 5 years ending with the date of the sequestration to which the application relates.
- (4) For the purposes of subsection (2) above—
- “excessive pension contribution” shall be construed in accordance with section 36A of this Act; and
- “gratuitous alienation” means an alienation challengeable under section 34(1) of this Act.

#### Textual Amendments

- F3** S. 56B(1) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(2)(a)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F4** Words in s. 56B(2) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(2)(b)(i)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F5** S. 56B(2)(ba) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(2)(b)(ii)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F6** Words in s. 56B(3) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(2)(c)**, 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

#### 56C Application of section 67(9)

- (1) Where the [<sup>F7</sup>Accountant in Bankruptcy, or as the case may be, the] sheriff thinks it appropriate, the [<sup>F7</sup>Accountant in Bankruptcy, or as the case may be, the] sheriff may specify in the bankruptcy restrictions order that subsection (9) of section 67 of this Act shall apply to the debtor during the period he is subject to the order as if he were a debtor within the meaning of subsection (10)(a) of that section.
- (2) For the purposes of subsection (1) above, section 67(10) of this Act shall have effect as if, for paragraph (c) of that subsection, there were substituted—
- “(c) the relevant information about the status of the debtor is the information that—
- (i) he is subject to a bankruptcy restrictions order; or
  - (ii) where his estate has been sequestrated and he has not been discharged, that fact.”.

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#### Textual Amendments

- F7** Words in s. 56C(1) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 33\(3\)](#), 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

### 56D [<sup>F8</sup>Timing for making an order]

- (1) [<sup>F9</sup>The Accountant in Bankruptcy must make, or apply to the sheriff for, a bankruptcy restrictions order] , subject to subsection (2) below, within the period beginning with the date of sequestration and ending with the date on which the debtor's discharge becomes effective.
- [<sup>F10</sup>(2) After the end of the period referred to in subsection (1), the Accountant in Bankruptcy may—
- (a) make a bankruptcy restrictions order only with the permission of the sheriff, and
  - (b) make an application for a bankruptcy restrictions order only with the permission of the sheriff.]

#### Textual Amendments

- F8** S. 56D heading substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 33\(4\)](#), 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F9** Words in s. 56D(1) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 33\(5\)\(a\)](#), 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F10** S. 56D(2) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 33\(5\)\(b\)](#), 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

### 56E Duration of order and application for annulment

- (1) A bankruptcy restrictions order—
- (a) shall come into force when it is made; and
  - (b) shall cease to have effect at the end of the date specified in the order.
- [<sup>F11</sup>(2) The date specified in a bankruptcy restrictions order under subsection (1)(b)—
- (a) in the case of an order made by the Accountant in Bankruptcy—
    - (i) must not be before the end of the period of 2 years beginning with the date on which the order is made, but
    - (ii) must be before the end of the period of 5 years beginning with that date, and
  - (b) in the case of an order made by the sheriff must not be—
    - (i) before the end of the period of 5 years beginning with the date on which the order is made, or
    - (ii) after the end of the period of 15 years beginning with that date.]

(3) On an application by the debtor the [<sup>F12</sup>person mentioned in subsection (4)] may—

    - (a) annul a bankruptcy restrictions order; or

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- (b) vary such an order, including providing for such an order to cease to have effect at the end of a date earlier than the date specified in the order under subsection (1)(b) above.
- [ The person is—
- <sup>F13</sup>(4) (a) in the case of a bankruptcy restrictions order made by the Accountant in Bankruptcy, the Accountant in Bankruptcy, and
  - (b) in the case of a bankruptcy restrictions order made by the sheriff, the sheriff.
- (5) If an application under subsection (3) is made to the Accountant in Bankruptcy, 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, amend 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 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.
- (7) The sheriff may—
- (a) in determining such an appeal, or
  - (b) otherwise on an application by the Accountant in Bankruptcy,
- make an order providing that the debtor may not make another application under subsection (3) for such period as may be specified in the order.]

#### Textual Amendments

- F11** S. 56E(2) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(6)(a), 57(2)**; [S.S.I. 2014/261](#), **art. 3** (with **arts. 4-7, 12**) (as amended by [S.S.I. 2015/54](#), **art. 2**)
- F12** Words in s. 56E(3) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(6)(b), 57(2)**; [S.S.I. 2014/261](#), **art. 3** (with **arts. 4-7, 12**) (as amended by [S.S.I. 2015/54](#), **art. 2**)
- F13** S. 56E(4)-(7) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(6)(c), 57(2)**; [S.S.I. 2014/261](#), **art. 3** (with **arts. 4-7, 12**) (as amended by [S.S.I. 2015/54](#), **art. 2**)

#### 56F Interim bankruptcy restrictions order

- [<sup>F14</sup>(1) Subsection (2) applies at any time—
- (a) after the Accountant in Bankruptcy notifies the debtor under section 56A(3) that the Accountant in Bankruptcy proposes to make a bankruptcy restrictions order, and
  - (b) before the Accountant in Bankruptcy decides whether to make the order.
- (2) The Accountant in Bankruptcy may make an interim bankruptcy restrictions order if the Accountant in Bankruptcy thinks that—
- (a) there are *prima facie* grounds to suggest that a bankruptcy restrictions order will be made, and
  - (b) it is in the public interest to make an interim bankruptcy restrictions order.
- (2A) Subsection (2B) applies at any time between—

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- (a) the making of an application to the sheriff for a bankruptcy restrictions order, and
- (b) the determination of the application.

(2B) The sheriff may, on the application of the Accountant in Bankruptcy, make an interim bankruptcy restrictions order if the sheriff thinks that—

- (a) there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
- (b) it is in the public interest to make an interim bankruptcy restrictions order.]

<sup>F15</sup>(3) .....

(4) An interim order—

- (a) shall have the same effect as a bankruptcy restrictions order; and
- (b) shall come into force when it is made.

[<sup>F16</sup>(5) An interim order ceases to have effect—

- (a) in the case of an interim order made by the Accountant in Bankruptcy, on the Accountant in Bankruptcy deciding whether or not to make a bankruptcy restrictions order,
- (b) in the case of an interim order made by the sheriff, on the determination of the application for the bankruptcy restrictions order, or
- (c) if the sheriff discharges the interim order, on the application of the Accountant in Bankruptcy or of the debtor.]

(6) Where a bankruptcy restrictions order is made in respect of a debtor who is subject to an interim order, section 56E(2) of this Act shall have effect in relation to the bankruptcy restrictions order as if the reference to the date on which the order is made were a reference to the date on which the interim order was made.

**Textual Amendments**

**F14** S. 56F(1)-(2B) substituted for s. 56F(1)(2) (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(7)(a), 57(2)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

**F15** S. 56F(3) repealed (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(7)(b), 57(2)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

**F16** S. 56F(5) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 33(7)(c), 57(2)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

<sup>F17</sup>**56G Bankruptcy restrictions undertaking**

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**Textual Amendments**

**F17** S. 56G repealed (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), **ss. 52, 57(2)**; S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

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**<sup>F18</sup>56H Bankruptcy restrictions undertakings: application of section 67(9)**

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**Textual Amendments**

**F18** S. 56H repealed (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 4](#); [S.S.I. 2014/261](#), art. 3 (with arts. 4-7, 12) (as amended by [S.S.I. 2015/54](#), art. 2)

**56J Effect of recall of sequestration**

- (1) Where an award of sequestration of a debtor's estate is recalled under section 17(1) of this Act—
  - (a) the sheriff may annul any bankruptcy restrictions order, [<sup>F19</sup>or interim bankruptcy restrictions order] which is in force in respect of the debtor; [<sup>F20</sup>and]
  - (b) no new bankruptcy restrictions order or interim order may be made in respect of the debtor; <sup>F21</sup>...
  - <sup>F21</sup>(c) .....
- (2) Where the sheriff refuses to annul a bankruptcy restrictions order, [<sup>F22</sup>or interim bankruptcy restrictions order] under subsection (1)(a) above the debtor may, no later than 28 days after the date on which the award of sequestration is recalled, appeal to the sheriff principal against such a refusal.
- (3) The decision of the sheriff principal on an appeal under subsection (2) above is final.]
- <sup>F23</sup>(4) Where an award of sequestration of a debtor's estate is recalled under section 17D(1) or 17E(6)—
  - (a) the Accountant in Bankruptcy may annul any bankruptcy restrictions order or interim bankruptcy restrictions order which is in force in respect of the debtor, and
  - (b) no new bankruptcy restrictions order or interim bankruptcy restrictions order may be made in respect of the debtor.
- (5) Where the Accountant in Bankruptcy refuses to annul a bankruptcy restrictions order or interim bankruptcy restrictions order under subsection (4) the debtor may apply to the Accountant in Bankruptcy for a review of such a refusal.
- (6) An application under subsection (5) must be made before the end of the period of 14 days beginning with the day on which the award of sequestration is recalled.
- (7) If an application under subsection (5) 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 the refusal or annul the order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (8) The debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (7)(b) before the end of the period of 14 days beginning with the date of the decision.
- (9) The decision of the sheriff on an appeal under subsection (8) is final.]

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#### Textual Amendments

- F19** Words in s. 56J(1)(a) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 3 para. 30\(a\)\(i\)](#); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F20** Word in s. 56J(1)(a) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 3 para. 30\(a\)\(ii\)](#); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F21** S. 56J(1)(c) and word repealed (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 4](#); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F22** Words in s. 56J(2) substituted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), s. 57(2), [sch. 3 para. 30\(b\)](#); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)
- F23** S. 56J(4)-(9) inserted (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 33\(8\)](#), 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

#### <sup>F24</sup> **56K Effect of discharge on approval of offer of composition**

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#### Textual Amendments

- F24** S. 56K repealed (1.4.2015) by [Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(asp 11\)](#), [ss. 18\(2\)](#), 57(2); S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)



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