



# Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

## *Functions of sheriff and Accountant in Bankruptcy in sequestration*

### **33 Bankruptcy restrictions order**

(1) For section 56A of the 1985 Act, substitute—

#### **“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.”.

(2) In section 56B of the 1985 Act (grounds for making order)—

(a) for subsection (1), substitute—

“(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).”.

(b) in subsection (2)—

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- (i) after “The”, where it first occurs, insert “Accountant in Bankruptcy, or as the case may be, the”, and
  - (ii) after paragraph (b), insert—
    - “(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,”, and
  - (c) in subsection (3), after “The”, where it first occurs insert “Accountant in Bankruptcy, or as the case may be, the”.
- (3) In section 56C(1) of the 1985 Act (application of section 67(9)), after “the”, in the first and second places where it occurs, insert “Accountant in Bankruptcy, or as the case may be, the”.
- (4) The title of section 56D of the 1985 Act becomes “**Timing for making an order**”.
- (5) In section 56D of the 1985 Act—
  - (a) in subsection (1), for “An application for a bankruptcy restrictions order must be made” substitute “The Accountant in Bankruptcy must make, or apply to the sheriff for, a bankruptcy restrictions order”,
  - (b) for subsection (2), substitute—
    - “(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.”.
- (6) In section 56E of the 1985 Act (duration of order and application for annulment)—
  - (a) for subsection (2), substitute—
    - “(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.”,
    - (b) in subsection (3), for “sheriff” substitute “person mentioned in subsection (4)”,
    - (c) after subsection (3), insert—
      - “(4) The person is—

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- (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.”.
- (7) In section 56F of the 1985 Act (interim bankruptcy restrictions order)—
  - (a) for subsections (1) and (2), substitute—
    - “(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—
    - (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

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- (b) it is in the public interest to make an interim bankruptcy restrictions order.”,
  - (b) subsection (3) is repealed, and
  - (c) for subsection (5), substitute—
    - “(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.”.
- (8) In section 56J of the 1985 Act (effect of recall of sequestration), after subsection (3) insert—
- “(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.”.