



Bankruptcy (Scotland) Act 1985 (repealed)

1985 CHAPTER 66

Discharge of debtor

54 [F¹Automatic discharge of debtor]

- (1) Subject to the following provisions of this section, the debtor shall be discharged on the expiry of [F²1 year] from the date of sequestration.
- (2) Every debtor who has been discharged under or by virtue of this section or section 75(4) of this Act may apply to the Accountant in Bankruptcy for a certificate that he has been so discharged; and the Accountant in Bankruptcy, if satisfied of such discharge, shall grant a certificate of discharge in the prescribed form.
- (3) The F³ . . . trustee or any creditor may, not later than F⁴ . . . 9 months after the date of sequestration, apply to the sheriff for a deferment of the debtor's discharge by virtue of subsection (1) above.
- (4) On an application being made to him under subsection (3) above, the sheriff shall order—
 - (a) the applicant to serve the application on the debtor and (if he is not himself the applicant and is not discharged) the F³ . . . trustee; and
 - (b) the debtor to lodge in court a declaration—
 - (i) that he has made a full and fair surrender of his estate and a full disclosure of all claims which he is entitled to make against other persons; and
 - (ii) that he has delivered to the F⁵ . . . F³ . . . trustee every document under his control relating to his estate or his business or financial affairs;and, if the debtor fails to lodge such a declaration in court within 14 days of being required to do so, the sheriff shall defer his discharge without a hearing for a period not exceeding 2 years.

Status: Point in time view as at 01/04/2008.

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- (5) If the debtor lodges the declaration in court within the said period of 14 days, the sheriff shall—
- (a) fix a date for a hearing not earlier than 28 days after the date of the lodging of the declaration; and
 - (b) order the applicant to notify the debtor and the ^{F3} . . . trustee or (if he has been discharged) the Accountant in Bankruptcy of the date of the hearing;
- and the ^{F3} . . . trustee or (if he has been discharged) the Accountant in Bankruptcy shall, not later than 7 days before the date fixed under paragraph (a) above, lodge in court a report upon the debtor's assets and liabilities, his financial and business affairs and his conduct in relation thereto and upon the sequestration and his conduct in the course of it.
- (6) After considering at the hearing any representations made by the applicant, the debtor or any creditor, the sheriff shall make an order either deferring the discharge for such period not exceeding 2 years as he thinks appropriate or dismissing the application:
- Provided that the applicant or the debtor may appeal against an order under this subsection within 14 days after it is made.
- (7) Where the discharge is deferred under subsection (4) or (6) above, the clerk of the court shall send—
- (a) a certified copy of the order of the sheriff deferring discharge to the keeper of the register of inhibitions and adjudications for recording in that register; and
 - (b) a copy of such order to—
 - (i) the Accountant in Bankruptcy; and
 - (ii) the ^{F3} . . . trustee (if not discharged) for insertion in the sederunt book.
- (8) A debtor whose discharge has been deferred under subsection (4) or (6) above may, at any time thereafter and provided that he lodges in court a declaration as to the matters mentioned in sub-paragraphs (i) and (ii) of paragraph (b) of the said subsection (4), petition the sheriff for his discharge; and subsections (5) to (7) above shall, with any necessary modifications, apply in relation to the proceedings which shall follow the lodging of a declaration under this subsection as they apply in relation to the proceedings which follow the timeous lodging of a declaration under the said paragraph (b).
- (9) The ^{F3} . . . trustee or any creditor may, not later than 3 months before the end of a period of deferment, apply to the sheriff for a further deferment of the discharge; and subsections (4) to (8) above and this subsection shall apply in relation to that further deferment.

Textual Amendments

- F1** S. 54 heading substituted (1.4.2008) by virtue of [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 1(4)**, 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))
- F2** Words in s. 54(1) substituted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 1(2)**, 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))
- F3** Words in s. 54 repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 226**, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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- F4** Words in s. 54(3) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 1(3), 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))
- F5** Words in s. 54(4)(b)(ii) repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), Sch. 6 Pt. 1 (with s. 223); S.S.I. 2008/115, art. 3(2)(3), Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

Modifications etc. (not altering text)

- C1** S. 54 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), Sch. 2 para. 6(c)(ii)

55 Effect of discharge under section 54.

(1) Subject to ^{F6}subsections (2) and (3) below, on the debtor's discharge under section 54 of this Act, the debtor shall be discharged within the United Kingdom of all debts and obligations contracted by him, or for which he was liable, at the date of sequestration.

(2) The debtor shall not be discharged by virtue of subsection (1) above from—

(a) any liability to pay a fine or other penalty due to the Crown;

^{F7}(aa) any liability to pay a fine imposed in a district court;

(ab) any liability under a compensation order within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995;]

(b) any liability to forfeiture of a sum of money deposited in court under section 1(3) of the ^{M1}Bail etc. (Scotland) Act 1980;

(c) any liability incurred by reason of fraud or breach of trust;

(d) any obligation to pay aliment or any sum of an alimentary nature under any enactment or rule of law or any periodical allowance payable on divorce by virtue of a court order or under an obligation, not being

^{F8}(i) aliment or a periodical allowance which could be included in the amount of a creditor's claim under paragraph 2 of Schedule 1 to this Act; ^{F9}or

(ii) 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—

(aa) any person by whom it was due to be paid; or

(bb) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.]

(e) the obligation imposed on him by section 64 of this Act.

^{F10}(3) The discharge of the debtor under the said section 54 shall not affect any right of a secured creditor—

(a) for a debt in respect of which the debtor has been discharged to enforce his security for payment of the debt and any interest due and payable on the debt until the debt is paid in full; or

(b) for an obligation in respect of which the debtor has been discharged to enforce his security in respect of the obligation.]

^{F11F12}(4) In subsection (2)(a) above 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.]

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Textual Amendments

- F6** Words in s. 55(1) substituted (retrospectively) by 1993 c. 6, s. 11(3), **Sch. 1 para. 23(2)(4)**
- F7** S. 55(2)(aa)(ab) inserted (S.) (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 58(4)**
- F8** Word "(i)" inserted (4.4.1993) by Child Support Act 1991 (c. 48, SIF 20), s. 58(13), **Sch. 5 para. 6(4)(a)** (with s. 9(2)); S.I. 1992/2644, **art. 2.**
- F9** Word "or" and s. 55(2)(d)(ii) inserted (4.4.1993) by Child Support Act 1991 (c. 48, SIF 20), s. 58(13), **Sch. 5 para. 6(4)(b)** (with s. 9(2)); S.I. 1992/2644, **art. 2.**
- F10** S. 55(3) inserted (retrospectively) by 1993 c. 6, s. 11(3), **Sch. 1 para. 23(3)(4)**
- F11** S. 55(4) inserted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1)(3), **Sch. 11 para. 15(5)**; S.I. 2003/333, **art. 2(1)**, Sch. (subject to transitional provisions in arts. 3-14) (as amended by S.I. 2003/531); S.S.I. 2003/210, **art. 2(1)(b)**, Sch. (subject to transitional provisions in arts. 3-7)
- F12** S. 55(4): by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 36, 227(3), **Sch. 1 para. 47** (with s. 223), it is provided (1.4.2008) that, in s. 55, subsection (3) (references to a fine or penalty to include a confiscation order), as inserted by paragraph 15(5) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29), is renumbered as subsection (2A); S.S.I. 2008/115, **art. 3(1)(i)** (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

Modifications etc. (not altering text)

- C2** S. 55(2) amended (E.W.S.) by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), **s. 39(6)**
- C3** S. 55(2) amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(5)(c)**, 47(4)(a)
- C4** S. 55(2) amended by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, Sch. 8 para. 16, **Sch. 15 para. 109**
- C5** S. 55(2) extended (3.2.1995) by 1994 c. 37, **ss. 65(4)**, 69(2)
S. 55(2) extended (S.) (1.4.1996) by 1995 c. 43, **ss. 47(3)**, 50(2)
- C6** S. 55(2) excluded (S.) (31.3.1996) by 1995 c. 20, **ss. 113(7)**; S.I. 1996/517, **art. 3(2)**

Marginal Citations

- M1** 1980 c. 4.

56 Discharge on Composition.

Schedule 4 to this Act shall have effect in relation to an offer of composition by or on behalf of the debtor to the ^{F13} . . . trustee in respect of his debts and his discharge and the discharge of the ^{F13} . . . trustee where the offer is approved.

Textual Amendments

- F13** Words in s. 56 repealed (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 6 Pt. 1** (with s. 223); S.S.I. 2008/115, **art. 3(2)(3)**, Sch. 2 (with arts. 4-6, 10 (as amended (with effect from 31.1.2011) by S.S.I. 2011/31, art. 5))

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