



ACCOUNTANT  
IN BANKRUPTCY  
SCOTLAND'S INSOLVENCY SERVICE

PUBLICATION AIB1  
DEBTOR'S GUIDE



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## BANKRUPTCY AND SEQUESTRATION

### WHAT DO THEY MEAN?

Sequestration is the Scottish legal term for personal bankruptcy. It starts when someone in debt (debtor) is declared bankrupt in court. It means that the person who is bankrupt has to hand over the things they own to a trustee. The trustee sells those things to pay off some of the money owed to creditors. The creditors are the people or organisations that are owed money by the debtor. The trustee is the person who handles what the debtor owns for the benefit of the creditors.

If you are sequestrated, it is the duty of the trustee to sell your assets or property and to use the money the trustee gets for them to:

- pay the costs of managing your sequestration; and
- pay your creditors as much as possible of what you owe them.

Your trustee may also need you to make some payment from your income if you have a regular job.

### EXPLANATION OF RELEVANT LEGAL TERMS

#### **Apparent insolvency**

A legal term that means you are unable to pay your debts and that at least one of your creditors has taken legal action against you.

#### **Charge for payment**

The formal demand for payment following a decree. A Sheriff Officer usually serves it on you and you have to pay the debt within 14 days.

#### **Creditor**

Any person, business or organisation you owe money to.

## **Debt Arrangement Scheme**

A brief debt management tool introduced by the Scottish Executive accessed through an approved money adviser (see [www.moneyscotland.gov.uk](http://www.moneyscotland.gov.uk)). It may help you if you have two or more debts and want to pay what you owe, by giving you more time for repayments free from the threat of enforcement (diligence) or bankruptcy.

## **Debtor**

Any person who owes money. In this booklet it means someone who is insolvent and is aiming to have their estate sequestrated.

## **Decree**

A formal order of court which says the debtor must pay money to a creditor. This might follow court action such as:

- small claim (up to £750);
- summary cause (£750 to £1500); or
- ordinary action (more than £1500).

## **Decree of adjudication**

Adjudication is an action in the Court of Session (Scotland's Supreme Civil Court) where property you own which can be inherited, usually a house or similar, is transferred to a creditor to pay a debt.

## **Estate**

Your estate is literally everything of value you own, including any rights you may have to receive money or goods from anyone else.

## **Interim trustee**

Someone appointed by the court to handle your estate until a permanent trustee is appointed.



## Permanent trustee

Someone appointed by the court to:

- take possession of your estate;
- sell any property you own; and
- pay your creditors as much as possible of what you owe them.

## Petition

A formal application to the court.

## Protected trust deed

A trust deed, which transfers all of your estate to a trustee and is not objected to by most of your creditors or by creditors to whom you owe at least one third of your debts. It is binding on **all** the creditors, that is, 'protected'. None of the creditors may then apply to have you sequestered.

## Qualified creditor or creditors

A creditor to whom you owe at least £1500 (or a number of creditors to whom you owe at least £1500 in total).

## Receiving order

A court order in England or Wales placing your assets under the control of an Official Receiver.

## Sequestration

The Scottish legal term for bankruptcy. Bankruptcy is a formal court process which transfers your property to a trustee.

## Sequestration for rent

A court process that can be raised against you by your landlord for rent you have not paid. (This is not the same as bankruptcy or formal sequestration.)

### **Statutory demand**

A formal demand by a creditor giving you 21 days to repay a debt. The demand must be on the proper form and be served by a Sheriff Officer.

### **Summary Warrant**

An order granted by the court to local or public authorities giving the creditor authority to recover amounts of money you owe. This procedure is generally used to recover unpaid rates, taxes, community charge and so on.

### **Trust deed**

A voluntary alternative to sequestration. You can transfer all or part of the estate to a trustee to handle for the benefit of your creditors.

### **Are there alternatives to sequestration?**

If you have serious debt problems, you should think about other options before going bankrupt.

#### **→ Debt rescheduling**

As soon as you find that you cannot pay bills or instalments when they are due, you should contact your creditors to tell them why. They might give you more time to pay or agree to reduce your repayments for a time until things get better. This is called debt rescheduling. Your local Citizens Advice Bureau, Trading Standards Office, or Money Advice Centre can help you to try and reach this sort of arrangement with your creditors. This help will be free.

## → Debt Arrangement Scheme

This is a new statutory scheme introduced by the Scottish Executive on 30 November 2004. It is free to you as a debtor and gives you time to pay back what you owe if you have some surplus income. It will also protect you from the threat of enforcement or bankruptcy whilst you are on the scheme. Entry to the scheme must be through an approved money adviser (see [www.moneyscotland.gov.uk](http://www.moneyscotland.gov.uk)). The adviser negotiates with your creditors and then applies to the DAS administrator (AiB) for approval of the debt payment programme (DPP). Creditors can object to the DPP but we can disregard unreasonable objections. Once approved, participating creditors cannot take enforcement measures.

## → Trust deeds

If you cannot reschedule your debt but you have enough income or assets to pay at least some of what you owe, you may be able to sign a trust deed. A trust deed is a voluntary arrangement. However, once you have signed it, you must keep to its terms. A trust deed is similar to sequestration. It means that you have to hand over your assets and property to a trustee. They must then manage them so that they can pay your creditors as much as possible of the debt you owe them. You will also have to pay the trustee's expenses. The trust deed avoids you being called a bankrupt.

Again, you can also get advice from a Citizens Advice Bureau, Money Advice Centre, or a solicitor. We have a booklet – **AiB7** – which tells you more about trust deeds.

## CAN I BE SEQUESTERED AT ANY TIME?

No, there are certain conditions to being sequestered and these are:

- you must owe at least £1500; **and** one or more of your creditors must have taken you to court to enforce or demand you to repay a debt: or
- you must have been on a debt payment programme under DAS that has been revoked **and** one of the creditors in the DPP has been to court and obtained a decree on one of the debts.

The technical term for these situations is that you are 'apparently insolvent'.

You will be apparently insolvent if any of these apply to you.

- If a creditor goes to court and gets a decree on your debt, and a 'Charge for payment' of that debt (14 days' notice) has run out without you paying.
- A government department or local authority has been to court to get a summary warrant against you to recover rates, Council Tax, other taxes and so on **and** some of your goods have been attached (or someone has tried to attach them) to the order **and** 14 days have passed.
- You have been served with a 'statutory demand for payment' (21 days' notice) and you have not paid it in the time limit.

These are the main ways in which you can be sequestered. However, creditors can take other legal action to recover debts which might also make you 'apparently insolvent'. If you have any doubts, ask for help from one of the advisory organisations listed on page 33 or call our helpline. We produce a booklet – **AiB6** – that explains 'apparent insolvency' in more detail.



## CONDITIONS FOR SEQUESTRATION

### HOW CAN I BE SEQUESTERED?

A creditor who you owe at least £1500 can petition a court for your sequestration. (It is also possible for two or more creditors you owe at least £1500 together to apply together.) The creditor can apply either at a local Sheriff Court or at the Court of Session in Edinburgh.

The court will send out what is called a Warrant to Cite. You will receive this either by recorded delivery or from a Sheriff Officer. This warrant will call you to appear in court on a certain date. You do not have to go to court unless you want to argue that you should not be sequestered. However, you can normally only avoid sequestration if you go to court and prove that either:

- you have paid the debt; or
- you can guarantee that you can pay the debt.

**If you do not appear, you will almost certainly be sequestered. Your sequestration will begin from the date the court issued the warrant telling you to appear.**

If you get a citation (summons), you may want to ask a solicitor for advice. This might be free if you are on Income Support or get paid very little and you go to a solicitor in the Legal Advice and Assistance Scheme. You can also get help from one of the organisations shown on page 33.

### Can I apply for my own sequestration?

Yes, you might want to apply for your sequestration to prevent your creditors from using other forms of debt recovery (such as arranging to save money you owe directly from your wages – this is called a wages arrestment) or simply because your debt is worrying you all the time and you need to put your mind at rest.

But, you must meet certain conditions before you can apply to court for your own sequestration.

- You must be 'apparently insolvent'.
- You must owe at least £1500.
- You must not have been sequestrated during the last 5 years.

Even if you are not 'apparently insolvent', you can still apply if:

- you have the agreement (this is called a concurrence) of a creditor or creditors to whom you owe at least £1500; or
- you signed a trust deed but it did not become a protected trust deed because most of your creditors objected to it. (See our booklet AiB7.)

**Self-sequestration is a very serious step. You should ask a professional for help and think about other ways of dealing with your debt before you ask the court to make you bankrupt.**

### **Advantages**

- Your creditors will no longer be able to pursue you or take action against you to recover what you owe.
- You will not have to make further payments to your creditors except in the case of any debt secured on your home. Failure to make payments in respect of such a debt may result in your home being repossessed.
- You may expect to be discharged after 3 years and will then be free of debt with certain limited exceptions (unless you have accumulated any new debts since the date of your sequestration).

## Disadvantages

- If you own any valuable property, including life assurance policies you will probably lose them.
- If you own your own home you may possibly lose it.
- If you are in paid employment you may have to make a contribution.
- If you acquire any money or property after the date of your sequestration and before the date of your discharge you will have to surrender it to your trustee.
- While you are sequestered it will be unlawful for you to incur credit of more than £250 unless you tell the lender that you are an undischarged bankrupt.
- Your sequestration will be noted by credit reference agencies and you may have difficulty in obtaining credit even after your discharge.

## How do I apply for my own sequestration?

If you meet the conditions we have given on page 12 and you decide to apply for your own sequestration, there is a form that you must fill in. This form is called a debtor's petition form. You may be able to get hold of it from your local Sheriff Court. We have a booklet – **AiB2** – that tells you how to fill in this form. If the court approves your application, your sequestration will start from the date of the court's decision. **So before taking your form to the court, you must be sure that you want to go ahead.**

There are two different forms depending on whether you are applying because you are apparently insolvent or you have the agreement of one of your creditors. Make sure that you have the right form.

## HOW MUCH DOES SEQUESTRATION COST?

When we wrote this booklet it cost £63 to start sequestration proceedings in court. Court fees can change every year, so you should contact the court to confirm the current fee. If you ask a solicitor to draw up and present the petition in court, they will charge you unless you are eligible for legal aid. The trustee will take other costs such as your fees and their expenses out of your assets. You will not have to pay for any of those costs directly.

## WHO WILL BE MY TRUSTEE?

If a creditor sequestrates you, they may ask the court to appoint a professional 'insolvency practitioner' as trustee. You can also do this if you are applying for your own sequestration. But, the insolvency practitioner must agree to it and they will want to be certain that there will be enough money in your estate to cover their fees. In most cases the court appoints the Accountant in Bankruptcy to be your trustee. She might use us (we are her staff) to work on your case or she may have the work done by an insolvency practitioner. It will make no difference to you, but you will be told who is working on your sequestration.

## WHO IS THE ACCOUNTANT IN BANKRUPTCY?

She is a government official (representative) who is in charge of handling personal bankruptcy in Scotland. She also acts as trustee in all sequestrations except those in which a private-sector insolvency practitioner is appointed.

## WHAT WILL I HAVE TO DO AFTER I AM SEQUESTERED?

At the same time as the court awards your sequestration, they will appoint a trustee. The trustee will get in touch with you and, if a creditor sequestered you, you must supply:

- a list of all your assets (property);
- a list of all your debts;
- a statement of the money you get each week or month (wage slips); and
- a list of what you spend each week and how much you spend on each item. (If you applied for your own sequestration, you will have already provided this for the court.)

The trustee may also want to:

- visit your home;
- visit any business premises you own or rent to check your statement and to get any more information they may need; or
- ask you to come to their office.

## YOUR RESPONSIBILITIES AS A DEBTOR

- You must give the Trustee a contact address so that information and instructions about your bankruptcy can be sent to you.
- You must complete a statement of your assets and liabilities. This means filling in a questionnaire about each debt, and your money and property. The statement must be signed to confirm that it is correct and complete. The completed statement must be returned to the Trustee within seven days. AiB has produced a leaflet AiB3 'Completing the Statement of Assets and Liabilities'. Please ask for a copy of this leaflet if you would like more information about this responsibility.

- You may have to hand over money or valuables. You may also have to hand over any paperwork about finances. If you ran a business, you must hand over any paperwork about that. If the business dealt in perishable goods these may have to be handed over also.
- A Trustee can ask you and your spouse or partner to come to a meeting and answer questions. You and your spouse or partner should cooperate with a request to come to a meeting and answer questions. If necessary, Trustees can ask the Sheriff to order an examination under oath of you and your husband or wife at the Sheriff Court.
- You must tell the Trustee if your financial circumstances change while you are bankrupt. You have to tell the Trustee if you inherit or win any money or property.
- You cannot give away your property or sell it for less than it is worth to someone who would normally have paid full price for it.
- You cannot pay just one of your debts if that would be unfair to anyone else you owe money to.
- You must cooperate with the Trustee and must not be obstructive.
- You must not tell the Trustee anything that you know is untrue. You must not change any paperwork, and if you know someone else has changed it you must tell the Trustee.

You must not destroy or damage any of your property or any of your paperwork. You must not hide it or take it out of Scotland.

It is important that you understand your responsibilities. You may have to go to the Sheriff Court if you ignore your legal responsibilities. The Sheriff can order you to meet your responsibilities. The Sheriff can impose fines and prison sentences for failure to obey a court order or for failing to meet some responsibilities.

The Trustee can also apply to the Sheriff to defer your discharge from bankruptcy if you have not cooperated with your responsibilities

You must:

- tell the truth when your trustee asks you about your finances;
- give your trustee **all** the relevant documents and accounts about your business and finances;
- tell your trustee what assets you have, hand them over to the trustee, and sign any papers they ask you to, so that they can raise money by selling those assets;
- give the trustee full details of what you earn and how much you and your family need to live on; and
- tell the trustee about any change in your financial circumstances. For example, this could include if you:
  - have been unemployed and then get a job;
  - get a better paid job or position; or
  - inherit money or property or receive money from any other source.

Any money or property you receive before the date your sequestration is discharged belongs to the trustee and you must hand it over to them.

Tell the trustee if you change your address.

Always co-operate with the trustee. If you do not, it can result in criminal charges being made against you and you could end up being fined or sent to prison, or both.

## WHAT CAN'T I DO DURING THE SEQUESTRATION?

- You must not gain credit over £250 without telling the lender that you are an undischarged bankrupt. You may be guilty of a criminal offence if you do.
- You are not allowed to start up a limited company or be involved in the day-to-day management of a limited company.
- You are not allowed to act as a member of parliament, and you cannot become a member of any local council or school boards and so on.

## OTHER QUESTIONS YOU MAY HAVE

### WILL I BE ABLE TO KEEP THE THINGS I OWN?

You will normally be allowed to keep things you need for day-to-day living (such as settees, cookers and beds). You will not have to transfer them to your trustee. You can also keep any tools you need for your trade (up to a value of £1000) and certain other specific items.

The trustee can sell things they do not think you need such as hi-fis, motor vehicles, and jewellery.

## WHAT WILL HAPPEN TO MY HOUSE?

**This is often the main worry for people who have been sequestered or who are thinking about self-sequestration.**

The answer is not always straightforward. We will go through the most common questions and explain the possibilities.

Much depends upon your interest in the house. By this we mean:

- if it is rented;
- if you own it yourself or jointly with someone else;
- if you live alone; or
- if there are others living in the house.

We'll go through each of these situations.

### **What if my house is rented?**

If you rent your home, the trustee normally has no interest in the property. The only time it might be an issue is if they think your standard of accommodation is too high and you are paying too much rent. In this situation, your trustee can apply to the Sheriff for an order for a contribution from your income and at the same time ask the Sheriff to set a limit on how much rent you pay for your home. This limit will be less than you are paying.

Once you have been sequestered, your landlord should not take any action for rent arrears you have up to the date you were sequestered. But, they can take action, and even seek your eviction, if you failed to pay the rent due after your sequestration.

### **What if my spouse or partner owns the house?**

The trustee normally has no interest in the property if you do not own it. But, if you used to own all or part of the house and sold or gave it your spouse or partner, or to anyone else,

for less than the full market value, they can ask the court to set aside that transfer (in legal language, a gratuitous alienation) and to reclaim your interest in the property.

### **What if I own the house?**

If you own the house by yourself, your interest in the property will automatically transfer to the trustee and it will be their duty and intention to sell it. Before they can sell the property however, there are a number of hurdles to overcome.

Is there a mortgage? If there is and the bank or building society has already started repossession proceedings, the trustee is powerless to stop this and will have no interest in the property.

Secondly, is there any equity in the property? That means, is the house worth more (as assessed by a professional valuer) than what you still owe on your mortgage. And if so, is the difference big enough to make it worth putting the house on the market?

If the answer is 'no', your trustee may simply wait until such time as there is enough equity. In the meantime, they will be quite happy to allow you to remain in the house but you should be aware that if you fail to keep up the mortgage payments, the mortgage lender (the bank or building society) could take action to repossess the house. There is nothing your trustee can do to prevent this.

Keeping up the mortgage payments in these circumstances is like paying rent to keep a roof over your head. But it does not alter the fact that the house belongs to the trustee who can sell it at any time he thinks appropriate. You will not receive any of the proceeds of sale (unless there is a surplus remaining after the trustee has recovered all the costs of the sequestration and has paid your debts, with interest).

Even if there is sufficient equity to justify the expense of selling the house, your trustee must consider whether anyone else has rights to the property. For example, even if your spouse has no property rights as such, they may have occupancy rights under the Matrimonial Homes (Scotland) Act 1981.

In such a case, your trustee must either obtain the consent of the person with occupancy rights or, if that is refused, the authority of the Sheriff, in terms of section 40 of the Bankruptcy (Scotland) Act 1985. If your trustee has to apply to the Sheriff, the person with occupancy rights will be able to appear in court to argue why the application should not be granted.

The Sheriff may, after hearing objections, grant your trustee authority to sell. This allows your trustee to take the necessary action to enforce their rights. This can include taking action to evict if necessary. Sometimes the Sheriff may grant the application but delay its effect for 12 months so that the family has adequate time to find somewhere else to live.

It is also possible that the Sheriff might refuse authority to sell. This might be because children of the family are at a crucial stage in their education or because of ill health of someone who lives there.

But you must be clear that even if the Sheriff does refuse your trustee's application to sell, this does not affect his ownership rights. Your trustee can make repeated applications to the Sheriff whenever he thinks the circumstances leading to the Sheriff's refusal of the last application have changed.

It is not just spouses who have occupancy rights. Children of the family also have these rights and your trustee cannot sell the house without consent by or on behalf of the children. (For this purpose, a child of the family is any child or grandchild of the debtor, spouse, or former spouse and any child who has been brought up or accepted by the

debtor, spouse or former spouse, as if they were a child of the debtor or spouse, regardless of the age of the 'child'.) Civil partners in terms of the Civil Partnership 2004 now have similar rights to those of spouses.

These protections only apply to the family home and not to any other residential property which you own. For these purposes a family home is defined as a property where on the day before the date of sequestration, the debtor and/or spouse or former spouse or civil partner or former civil partner, were living, together with any children.

### **What if the house is jointly owned by me and my spouse or partner?**

If you own the house jointly with your spouse or partner, or even with anyone else, your trustee will not be able to realise your interest in the property without the co-operation of the joint owner.

Sometimes the joint owner agrees to sell the property and pay half the net proceeds directly to the trustee. Alternatively, the joint owner may agree to your trustee selling the property.

Another possibility is that the joint owner buys out your trustee's interest. They will normally agree to such an arrangement if they get the current equity value. Your trustee and the joint owner would each pay their own legal expenses.

If the joint owner does not co-operate in a sale and is unwilling or perhaps unable to buy out your trustee's interest in the property, they can ask the court for authority to sell (this is called an action for division and sale).

As with an application for authority to sell under section 40 of the Act, the joint owner has the right to defend the action. The court may grant or refuse authority to your trustee, with exactly the same consequences.

### **What happens if the house remains unsold after 3 years and I have obtained my discharge from the sequestration?**

This makes no difference to your trustee's right to sell the property in the interests of your creditors. What it does mean however, is that you can, if you are able, buy out the trustee's interest yourself by paying enough to cover the current equity value and any costs they have incurred in relation to the property. If there is still little or no equity, your trustee may agree to transfer their interest back to you for a nominal sum plus costs.

### **What action will the trustee take to stop me from selling the house?**

Your sequestration is recorded in an official register called the Register of Inhibitions and Adjudications. That entry expires on the third anniversary of your sequestration but the trustee can renew it every 3 years as long as they remain in office. As long as that entry remains in the Register, you cannot legally sell your house even though the title remains in your name.

In certain circumstances, the trustee may choose to have the title formally transferred into his own name and to apply for his own discharge, instead of repeatedly renewing the entry in the Register of Inhibitions and Adjudications. If the trustee does this and you subsequently want to sell the house or buy it back, you would first need to petition the court to re-open the sequestration and appoint a new trustee so that the necessary disposition could be signed. Doing this, of course adds considerably to the costs.

### **Is it in my interest to prevent the sale of the house?**

This is really for you to decide. In the short term, a delay might be useful to allow enough time for you to find other suitable accommodation (although your trustee would probably agree to a delay for that purpose anyway). If you continue to delay or prevent a sale to or by your trustee, you should be aware of the consequences:

- you will be unable to sell the house yourself if you want to move home;
- you will not be able to leave the house to your family.

In the end, your trustee has to be paid the value of the house. As they are entitled to receive the full equity value at the time of sale, the longer such a sale is delayed the more expensive it will become to buy out their interest in the property. The fact that you may have continued to meet the mortgage repayments does not increase your interest in the property nor affect your trustee's right to receive the full equity value.

### **What price will my trustee accept?**

If your trustee agrees to sell the house by private treaty, that is, without putting it on the open market, they will look to recover not just the current equity, that is the net value at the time of sale, but also any costs or expenses they have (for example, any legal costs incurred in seeking to obtain authority to sell). If they sell on the open market, they will want to obtain the best price possible after reasonable advertisement of the property.

### **What if I have an endowment policy?**

Usually endowment policies are formally assigned to the bank or building society and when the property is sold the policies are surrendered and the proceeds used to satisfy or reduce the outstanding mortgage. If the policies are not assigned they become the property of your trustee who may sell or surrender them as appropriate.

### **What is the bottom line?**

The bottom line is that if you own your own house, either wholly or jointly with another person, your trustee has the right to insist on the house, or at least your share of it, being sold. Their right to sell the house can be delayed but it cannot ultimately be denied. The only way in which you can recover or retain the ownership of the house is for your spouse or partner, or some other member of your family, to buy out your interest in the property, or for you yourself to do so, after you have been discharged.

### **WILL MY NEIGHBOURS OR EMPLOYER FIND OUT?**

Your sequestration is only advertised in a publication called the Edinburgh Gazette. This is an official publication which members of the public do not usually read. Normally you do not need to go to court (but see the paragraph 'How can I be sequestered?' on page 11).

Your employer would not have to know unless you have a contract that says you must tell them. Your trustee will need to know how much you are paid. If you can give your trustee payslips or a P60, they might not have to contact your employer.

## CAN I HAVE A BANK ACCOUNT WHILE I AM SEQUESTERED?

Some banks will allow you to have an account but you must give your trustee the details of it and tell the bank manager that you are an 'undischarged bankrupt'. Other banks will say no to an account. You need to ask your bank whether they would allow you an account if you were bankrupt.

## WHAT WILL HAPPEN TO MY WAGES OR BENEFITS?

The trustee will look at how much money you earn and how much you need to have a reasonable standard of living for you and your family. Your trustee can claim any money you don't need to live on as a voluntary contribution. If you and your trustee cannot agree the amount of the contribution, they can ask the court to say how much you must pay. If you only get state benefits, they are unlikely to ask for a contribution.

## WHAT HAPPENS TO THINGS I HAVE ON HIRE PURCHASE OR I HAVE BOUGHT THROUGH A CATALOGUE?

These items often stay the property of the company which supplied them and the company will probably take them back. However, in some cases, your trustee may take possession of the goods and sell them.

## WHAT IS THE EFFECT OF SEQUESTRATION ON SUPPLYING GAS, ELECTRICITY AND PHONE SERVICES?

### **Electricity**

The supplier may install a meter and you would have to pay by prepaid meter cards. Some suppliers may agree that you can pay each month.

## Gas

Scottish Gas will, in almost every case, set up a new account with you under a gas payment plan so you make payments each week or month. Other gas suppliers may agree something similar.

## Phone

British Telecom may allow the phone to stay in your name. If this happens, you will have to pay them a deposit and BT will stop and restart your phone service. Other phone companies may look at your particular circumstances, but will usually need someone else to take on your debts before agreeing to you keeping your phone.

## General

It may be possible for another person, for example your husband or wife, or a relative to agree to pay your bills. However, companies might need a deposit from them if this person does not have an existing credit rating with the company. If you do not pay any future bills, you will be disconnected.

Ordinary creditors will treat all electricity, gas and phone bills you owe at the date of sequestration as claims. If you have a meter that has been set to collect your missed payments you should contact your provider.

## WHAT HAPPENS TO MY DEBTS?

If you have a mortgage or other debt 'secured' on your property, the lender can still take action to get their money back. All your other creditors cannot take action to recover their debts once you are sequestrated. Once you are discharged (normally after 3 years), you will no longer have to make any contributions to your debts. But your debts are not written off until your trustee gets his discharge (which might be some years later depending on circumstances). However, there are a few exceptions to this, examples of which are:

- student loans you have received or which became payable after the date of sequestration:
- court fines;
- debts arising from fraud; and
- Social Fund loans or overpayments of benefit may be taken away from current benefits by the Department for Work and Pensions.

You still have to pay any debts you have run up after the date you were made bankrupt.

## HOW LONG WILL MY SEQUESTRATION LAST?

As long as you work with your trustee, your sequestration will normally end three years after the date of sequestration. This is called being discharged. However, if you do not co-operate with your trustee, the court can increase the length of your sequestration for up to two years at a time.

## AUTOMATIC DISCHARGE

Unless an application is made for deferment, you will be discharged from bankruptcy after 3 years.

- If you petitioned for your own sequestration, you will be discharged 3 years after the date it was awarded.
- If a creditor petitioned, you will be discharged 3 years after the date on which you were first cited to appear before the court.

## DEFERMENT OF DISCHARGE

Discharge is normally automatic but your permanent trustee or any creditor may apply to the court for discharge to be deferred. This must be made at least 3 months before the date of automatic discharge and you will receive notice of the application and of your right to object to the deferment. If you wish to object you should consider taking legal advice.

An application for deferment usually happens if you have been unco-operative (for example, if you agreed or were ordered to make a contribution from earnings but failed to do so).

The Sheriff may refuse an application for deferment of discharge or may grant the deferment for up to 2 years at a time. Repeated applications may be made, always 3 months before the new date for discharge, and on each occasion you have the right to object to a further deferment.

## CERTIFICATE OF DISCHARGE

Whenever you are discharged, whether automatically after 3 years or following a period of deferment, you will **not** be formally notified, but you can ask us for a certificate of discharge. There is a charge (£8 at the moment) for this and payment must be made in advance. You can apply for a certificate of discharge at any time after your date of discharge **but not before**. It is best to phone us about how much it costs before you apply, as sending the wrong amount will lead to delay.

## THE EFFECT OF DISCHARGE ON YOU

If there are no assets left to be realised, discharge means you no longer have any personal duty to repay those debts which you had at the date of your sequestration and the creditors you owed those debts to will not be able to take any legal action to recover them. **But** you are still responsible for paying any debt owing to a secured creditor, for example, the mortgage on your house (but see paragraphs 9-11 below).

You are also responsible for repaying any debts which you have run up after the date of your sequestration, for example, ongoing liabilities for rent, council tax, gas, electricity, telephone.

There are a few other exceptions. You are not discharged from liability to repay any of the following types of debt (even if they were outstanding when you were sequestrated).

- fines, penalties, compensation and forfeiture orders imposed by any court;
- any liability incurred as a result of fraud or breach of trust on your part;
- any liability to forfeiture of bail; or
- any sums due under a Social Fund loan.

Also you are not discharged of any obligation to pay aliment or child support maintenance, or any periodical payment ordered by the court to your ex-spouse if you are divorced. You **are** discharged from any unpaid arrears at the date of sequestration but not from sums due after the date of sequestration. Similarly, you are not discharged of any liability to repay any sums paid or due to be paid under a student loan after the date of sequestration. Again you will, however, be discharged from any unpaid arrears due as at the date of sequestration.

## THE EFFECT OF DISCHARGE ON YOUR ASSETS

Being discharged from bankruptcy does **not** end the sequestration itself. Nor does it mean that you get your assets or property back. If you are making a contribution, that will stop, but any life insurance, endowment or personal pension policies or the like remain in the hands of your permanent trustee who can surrender or cash them whenever able and it is in the interests of your creditors.

In particular, if you owned your own house, alone or jointly with your spouse or civil partner, and your permanent trustee has not already sold it, your interest in the property remains vested in your trustee. This is the case even if the Sheriff refused an application by your trustee to sell the house. It is still their duty to sell it when possible.

If the reason the house was not sold was because there was no equity, it is open to the security holder to call up their security at any time (although they are unlikely to do so if you keep the mortgage payments up to date). But remember that meeting your obligations in terms of the mortgage does not alter the position that your interest in or share of the property still belongs to your trustee who can exercise their right to sell whenever they think it appropriate. Your trustee will still need the consent of your spouse or civil partner or the authority of the Sheriff if the house is a family home.

## OTHER EFFECTS OF DISCHARGE

Once you are discharged, you can acquire assets again and your permanent trustee will have no claim on those acquired after your date of discharge (but see above regarding payments under life assurance policies, etc.). It may also be possible for you to buy back any assets which remain vested in your trustee who will normally look favourably on an offer to buy at current market value. If you think you are in a position to buy back assets, contact your trustee so that arrangements can be made for you to do so as soon as possible after your discharge.

You will also be able to borrow money again but you may find it difficult to obtain credit as your sequestration will have been noted by the credit reference agencies.

## THE SEQUESTRATION CONTINUES

The effect of your discharge on you has been explained above. You should be clear however that this does not bring the sequestration process to an end. As explained, any assets which are left stay in the hands of your trustee and it is their duty to realise them. The creditors are still entitled to recover their debts with interest and your trustee will not be discharged until either all the creditors are paid in full, with interest, or until there are no assets left in the estate.

The law says you must continue to co-operate with your trustee and to give any assistance and information required.

Until discharged, your trustee must continue to produce accounts at each claim for remuneration or expenses. You will receive notice of any remuneration allowed by us or the Commissioners as the case may be, and of your rights to appeal.

## DISCHARGE OF YOUR PERMANENT TRUSTEE

Your trustee can only apply for their his own discharge when there are no further claims on the sequestration estate or no assets left. This also discharges him of all liability for his actions. You will be notified of your trustee's application for discharge and of your rights to object to it.

If your trustee ultimately succeeds in satisfying all the claims of your creditors, including interest and in recovering all the costs of the sequestration process and there are funds or assets remaining, these will be returned to you at that time.

## WHO CAN I ASK FOR ADVICE?

Accountant in Bankruptcy  
1 Pennyburn Road  
Kilwinning  
Ayrshire  
KA13 6SA

Phone: 0845 612 6460

Fax: 0845 612 6470

Helpline: 0845 762 6171

We will be happy to help you by:

- telling you how sequestration works and what its consequences are; and
- helping you to fill in forms.

It is best to use our helpline (calls are all charged at the local rate) but you can also write or fax.

Your local Sheriff Court will be happy to give you an application form and advice about procedures. You can find the address and phone number in your local phone book.

We can only tell you how to go about sequestration. We cannot tell you whether sequestration is the best way of dealing with your debts and neither can the Sheriff Court.

The following organisations may be able to give you general advice and support.

**Money Advice Centres**  
**Citizens Advice Bureaux**  
**Trading Standards Offices**

Look at your local area phone book for addresses and numbers.

**The Bankruptcy Advisory Service**

2 Greenways  
Swanland Hill  
Kingston-upon-Hull HU14 3JN  
Phone: 01482 633 034

**Law Society of Scotland**

26 Drumsheugh Gardens  
Edinburgh  
EH3 7YR  
Phone: 0131 226 7411

To help to find a solicitor with specialist knowledge about insolvency matters.

**Institute of Chartered Accountants of Scotland**

CA House  
21 Haymarket Yards  
Edinburgh EH12 5BH  
Phone: 0131 347 0100

To help you to find an insolvency practitioner.

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# OTHER PUBLICATIONS

## Annual Report

### Notes for Guidance

- AiB1 Debtor's guide**
- AiB2** Filling in the debtor's application forms
- AiB3** Completing the statement of assets and liabilities
- AiB4** Creditor's guide
- AiB5** Petitions
- AiB6** Apparent insolvency
- AiB7** Trust deeds
- AiB8** Sequestration: debtor rights
- AiB9** Sequestration: creditor rights
- AiB10** Statutory meeting of creditors
- AiB11** Register of insolvencies, including:
  - AiB12a** Search request form (sequestrations)
  - AiB12b** Search request form (companies)
- AiB13** Introduction to sequestration
- AiB14** Recall of sequestration
- AiB15** Corporate insolvency: advice on liquidations and receiverships

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