CERTIFICATE FOR SEQUESTRATION

The Certificate for Sequestration was introduced by the Home Owner and Debtor Protection (Scotland) Act 2010 which came into force on 15 November 2010.

The relevant provisions are now contained in the Bankruptcy (Scotland) Act 2016 (the Act), which consolidated all primary bankruptcy legislation in Scotland and came into effect on 30 November 2016. The Bankruptcy Regulations were also updated and consolidated and came into effect at the same time.

General

1. This route into sequestration is aimed at debtors who cannot meet their debts as they fall due and wish to apply for their own bankruptcy. The Minimal Asset Process (MAP) is available for individuals with few assets who have total debts of at least £1,500 and not exceeding £17,000 and meet the criteria. The individual must either live in Scotland or have lived in Scotland in the previous 12 months.

2. In terms of the Act, Insolvency Practitioners are authorised persons who can issue a Certificate for Sequestration. In addition, the Insolvency Practitioner (IP) may grant authority to a member of their staff to act on their behalf to issue a Certificate. In such circumstances the IP requires to comply with these guidance notes.

3. The IP or authorised member of their staff issuing the Certificate must not be an associate of the debtor.

4. No charge can be made for issuing a Certificate although a fee may be charged for providing advice.

5. A Certificate for Sequestration can only be issued if the debtor has approached the authorised person personally and that person has carried out a review of the debtor's affairs and provided appropriate debt advice.

6. Once signed by the authorised person and the debtor, the debtor has a period of 30 days within which to apply to the Accountant in Bankruptcy for an award of sequestration. The day of signing is treated as day one. A non-refundable application fee of £200 is payable by the debtor to the Accountant in Bankruptcy for full administration bankruptcy and an application fee of £90 is payable for the minimal asset process.

Trustee’s responsibilities

7. Where an IP wishes a member of staff to be able to issue a Certificate for Sequestration on their behalf they must take precautions to ensure that they will be able to demonstrate that the member of staff has the relevant credentials to make such a decision. In addition the practitioner should issue written authority to the employee stating the period covered by the authority and have in place procedures for cancelling such authority.

8. Practitioners must apply the same skill and care in advising debtors as they are required to do in all their work. The debtor must be advised of debt management or other debt relief options available. Prior to granting a Certificate, Insolvency Practitioners must comply with Regulation 6 of the Bankruptcy (Scotland) Regulations 2016.

9. Practitioners should take steps to satisfy themselves as to the identity of the debtor.
10. The IP must be satisfied from available documentation that it is competent to issue the Certificate and should be prepared to justify their conclusion that the debtor is unable to pay their debts. The debtor must be advised that when they submit their application to the Accountant in Bankruptcy they will be required to submit evidence of their financial status.

11. Where a member of staff has granted a Certificate of Sequestration the IP remains responsible for the actions of the employee.

12. Certificates for Sequestration should be issued on the practitioner’s or the firm’s headed paper, be in the form specified in the Regulations and be signed and dated by the IP and by the debtor. Where an employee is issuing the Certificate, the Certificate should record that the employee is acting on behalf of the IP and a copy of the relevant authority should be attached to the Certificate.

13. It is recommended that practitioners maintain a record of all Certificates for Sequestration issued by them or under their authority. This will assist should any issues arise at a later date.

July 2018