



ACCOUNTANT
IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

PUBLICATION AIB2
FILLING IN THE DEBTOR'S
APPLICATION FORMS



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You can get more copies of this booklet, or copies of other booklets we produce, by phoning our helpline on **0845 762 6171**. (You can also find them on the Publications page of our website: <http://www.aib.gov.uk>)

This publication is available on request in community language versions and alternative formats. Please contact **0845 612 6460** for this to be arranged.



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IF YOU ARE APPLYING FOR SEQUESTRATION

INTRODUCTION

We have written this booklet to help you to fill in the form of petition or application for your own sequestration.

The forms

There are two forms you can use if you are applying your own sequestration.

- Only use form 1 if a creditor is agreeing to you applying for sequestration.
- Only use form 2 if you are 'apparently insolvent' and do not need a creditor to agree to the sequestration.

Make sure you use the correct form.

If you are not sure which form to use, ask for help from one of the organisations listed at the end of this booklet or call our helpline on 0845 762 6171.

Both forms include a section called the statement of assets and liabilities. You must fill in this section.

Throughout this guide when we refer to the forms, we are referring to the page and paragraph numbers (for example page 1, paragraph 1).

EXPLANATION OF 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.

Debtor

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

Debt Arrangement Scheme

A free debt management tool introduced by the Scottish Executive, accessed through an approved money adviser (see 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.

Decree

A formal order of court which says the debtor must pay money to a creditor.

This order can follow court action such as:

- Small claim (up to £750);
- Summary cause (£750-£1500); or
- Ordinary action (over £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 administer 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 sequestrated.

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

An order of the court 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 which 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 notice by a creditor 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.

HOW TO FILL IN FORM 1

Application if you have the agreement of a qualified creditor

Use form 1 if you are not apparently insolvent but are applying with the agreement of a qualified creditor. If you are applying without the agreement of a creditor, you must use form 2 and read page 9 of this booklet.

The first part of the form has three parts to be completed – ‘SHERIFFDOM OF’, ‘AT’, and ‘court reference no.’.

The **only** part which you must complete is the part ‘AT’. This refers to the court to which you are taking your completed form and you should enter the name of the court, for example, Kirkcaldy.

You should write your full name and address at the top of the form. If you trade under a business name you must also enter the name and address you trade from.

The numbered paragraphs contained on pages 1 and 2 of the form contain various statements. Statements 1, 2, 3, 4, 5, 6, 7 and 8 **must** apply to you before you can proceed with your application. The following notes deal with each paragraph in turn.

Paragraph

- 1 The term 'reside' means that this is the address where you normally live. This paragraph is about which court should deal with your application. This will normally be the nearest Sheriff Court to your home. If you are not sure phone the Sheriff Clerk, whose number is in the phone book. They will tell you which court to take the application to.
- 2 Form 1 contains a section called 'statement of assets and liabilities' (see pages 14 to 17 of this booklet). You must fill in this part.
- 3 You need to state whether you are or are not (by deleting as appropriate) in a debt payment programme under the Debt Arrangement Scheme. If you are in a programme, this will be revoked if sequestration is awarded.
- 4 If you are using form 1, you **must** have the agreement of at least one qualified creditor. If you do not have a single qualified creditor or the qualified creditor will not support your application, there must be a group of other creditors to whom you owe at least a total of £1500 who all agree to your application. In paragraph 3 you should enter the name and address of each qualified creditor who agrees to this application.

Normally we will be appointed as interim trustee. However, you may choose a trustee of your own. The person you choose must be a registered insolvency practitioner and must sign the undertaking to act as;

- Your interim trustee, and later
- Your permanent trustee if nobody else is appointed.

You should then lodge this with form 1.

An insolvency practitioner will not normally allow you to nominate them unless they are satisfied that you have enough assets in your estate to cover the costs of the sequestration or that someone else will guarantee to meet these costs.

5. **You must**, on the same day as taking the application to court, send a copy of the application form to:

Accountant in Bankruptcy
1 Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA or
LP-4 Kilwinning
- 6 The court will need evidence that you have sent a copy of form 1 to the us. Because of this, you should send it by recorded delivery or registered post. You must attach the receipt you get from the post office to the form in order to show it to the Sheriff Clerk.
- 7 All the information in form 1 must be **true, complete, and accurate** to the best of your knowledge and belief. If it is discovered that you have misinformed the court, you may have to pay the penalties outlined in the part containing the **WARNING**. These penalties may include a fine or imprisonment or both.

- 8 This paragraph is to confirm that all of the information you have given us in form 1 is **true, complete, and accurate** and confirms that you have read and understood the **WARNING** we refer to in paragraph 7 above.

If you are satisfied that you have filled in the form correctly, sign and date it where shown. At the end of this booklet you will find a list of organisations from whom you may be able to get help.

HOW TO FILL IN FORM 2

Application without the agreement of a creditor

Use form 2 if you do not have the agreement of a creditor or creditors. You can only use this form if one of the conditions described in paragraph 5 applies to you.

The first part of the form has three parts for you to fill in – ‘SHERIFFDOM OF’, ‘AT’, and ‘court reference no.’.

You must fill in the part ‘AT’. This refers to the court which you are taking your filled in form to and you should enter the name of the court, for example, Dingwall.

You should write your full name and address at the top of the form. If you trade under a business name you must also enter the name and address you trade from.

The numbered paragraphs contained on pages 1 and 2 of the form contain various statements. Statements 1, 2, 3, 4, 5, 6, 7 and 8 **must** apply to you before you can go ahead with your application. The following notes deal with each paragraph.

- 1 The term ‘reside’ means that this is the address where you normally live. This paragraph is about which court should deal with your application. This will normally be the nearest Sheriff Court to your home. If you are not sure phone the Sheriff Clerk, whose number is in the phone book. He or she will tell you which court to take the application to.

- 2 In order for this application to proceed, your debts, including any interest and expenses awarded against you, must add up to least £1500.
- 3 Part of form 2 contains a section called 'statement of assets and liabilities'. When you are filling that section in, check that the total of the debts you enter in part 3 of the statement of assets and liabilities adds up to at least £1500. However please also read page 14 of this booklet.
- 4 You must not have been sequestrated in the last five years. You need to count the five-year period back from the day before you take your application to court.
- 5 There are two statements contained in paragraph 5, one of which must apply to you. You should cross out the statement which does not apply.
 - a) You are 'apparently insolvent'. Apparent insolvency is a legal term which, in broad terms, means that you are unable to pay your debts and that one or more of your creditors have taken legal action against you. Page 2 of form 2 lists eight circumstances which can give rise to someone being 'apparently insolvent'. We explain these circumstances fully on page 13 of this booklet. There is another booklet, **AiB6**, which explains 'apparent insolvency' in more detail.

On page 2 of form 2, you also have to indicate which of the eight grounds for apparent insolvency applies to you. You do this by writing the appropriate number or numbers in the space provided.

- b) You have signed a trust deed which you hoped would become a protected trust deed but which did not become protected because a majority of your creditors objected to it. You should enter the date on which you signed the trust deed and enter the name and address of your trustee in the appropriate spaces.

- 6 You need to state whether you are or are not (by deleting as appropriate) in a debt payment programme under the Debt Arrangement Scheme. If you are in a programme this will be revoked if sequestration is awarded.
- 7 Normally we will be appointed interim trustee, but you can choose a trustee of your own. The person you choose must be a registered insolvency practitioner and must sign the undertaking to act as:
 - Your interim trustee, and
 - Your permanent trustee if nobody else is appointed.

You should then lodge this with form 2.

An insolvency practitioner will not normally allow you to nominate them unless they are satisfied that you have enough assets in your estate to cover the costs of the sequestration or that someone else will guarantee to meet these costs.

- 8 You must, on the same day as taking the application to court, send a copy of the application form to:

Accountant in Bankruptcy
1 Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA or
LP-4 Kilwinning
- 9 The court will need evidence that you have sent a copy of form 2 to us. Because of this you should send it by recorded-delivery or registered post. You must attach the receipt you get from the post office to the form to show it to the Sheriff Clerk.
- 10 All the information in form 2 must be **true, complete, and accurate**. If the court discovered that you have misinformed the court, you may have to pay the penalties outlined in the part containing the **WARNING**. These penalties may include a fine or imprisonment or both.

11 This paragraph is to confirm that all of the information you have given us in Form 2 is **true, complete, and accurate** and confirms that you have read and understood the **WARNING** referred to in paragraph 10 above.

If you are satisfied that you have completed the form correctly, sign and date it where shown.

APPARENT INSOLVENCY

Page 2 of form 2 contains eight paragraphs we refer to below. If one or more of these conditions applies to you, you are apparently insolvent and you must enter, on this part of the form, the number or numbers of the paragraphs which apply to you.

- 1 Following a decree against you, a creditor has served a charge for payment and you have not paid within the days allowed for payment.
- 2 A summary warrant has been granted against you to recover rates, council tax, other taxes, and so on and some of your goods have been attached (or someone has attempted to attach them) to the warrant **and** 14 days have passed. (Attaching them to the warrant means the creditor wants to sell the goods they have given details of on the warrant to get back the money you owe.)
- 3 The Court of Session has granted a decree of adjudication transferring your house (or other heritable property) to a creditor.
- 4 Your landlord has obtained a decree for sequestration for rent.
- 5 Following action by a creditor in a court in England or Wales, the court has made a receiving order against you.

- 6 One of your creditors has served a notice called a statutory demand upon you in respect of a debt of £750 or more and three weeks after the date of the notice you have still not paid that debt **or** told the creditor (by sending them a letter by recorded delivery) that you do not owe him the money or that the debt is not due for payment.
- 7 You have been sequestrated or made bankrupt in England, Wales or Northern Ireland.
- 8 A debt payment programme you were party to has been revoked under the Debt Arrangement and Attachment (Scotland) Act 2002 and a debt being paid under the programme is constituted by decree or document of debt as defined in section 10 (attachment) of that Act.

HOW TO COMPLETE THE STATEMENT OF ASSETS AND LIABILITIES

General points

- 1 This part of the form must be completed in CAPITAL LETTERS.
- 2 You must fill in all pages of the form. If any parts of the form do not apply to you, write 'not applicable' or N/A in the space.
- 3 Give all amounts to the nearest £. You do not need to show pence.
- 4 Fill in all parts except the AIB and court ref. nos., which are for official use only.

You must enter all details as best you can. You can be charged with a criminal offence if you deliberately leave out details or give false information.

PART 1 – LIST OF ASSETS

In PART 1 you should list all your assets:

PART 1A – [Moveable property, that is all assets other than land or buildings]

1 Cash

You should enter the total amount of cash you have to hand. Do not include money in bank or building society accounts.

2 Bank and building society accounts

Enter details of all the money you have (or not) in bank and building societies. If any of the accounts are in joint names, you should show the full amount, but put a letter [J] in brackets at the end of the account number to show that it is a joint account. Include details of any overdrawn account but put the letters [DR] after the balance.

3 Investments and savings (other than bank accounts)

You should enter all details of investments, savings certificates, savings bonds, premium bonds, and so on in the column headed 'Type of Investment'. You should also give details of the name of the firm the investment is with and any reference number in the appropriate columns. If you have an endowment policy, enter the particulars here.

4 Debts due to you

Enter here details of all sums owing to you, that is, money you have loaned to other people or trade debts if you were in business. You should write the name and address of the person or organisation in the first column. You should then write the amount of the debt and the date it was or is due to be repaid in the appropriate columns.

5 Other assets

Enter here details of all goods and valuables which you own. You should include goods you are still paying for on hire purchase or credit terms. Details of any motor vehicle owned by you should include the model and registration number.

PART 1B – Property which cannot be moved [land, houses, buildings]

Enter details of all properties in which you have a financial interest. Say if you have bought an ex-council house through the discount scheme. If you own a lease over property, give details of the term of the lease. In 'type of property' state whether the property is a flat, semi-detached house, office unit, and so on. In 'nature of interest' explain what your interest is in the property, in other words, whether you own it on your own or with someone else.

PART 2 – LIST OF LIABILITIES

PART 2A – Unsecured debts

List all of your debts including any amount you still owe on hire purchase or credit agreements. Do not include your mortgage or other secured debts (debts backed by your assets – usually your house). Put down the name and address of the creditor and a description of the debt, that is, whether it is a loan, guarantee, hire purchase agreement, domestic bill, and so on. Enter the amount you owe to each creditor.

Once you have finished listing all your unsecured debts, add them up and enter the total in the space provided beneath the table marked 'Total amount of unsecured debts'.

PART 2B – Secured debts [mortgages or other loans secured over particular property]

Give the name of any building society, bank, or financial institution where you have a mortgage or other secured loan. If there is more than one, give all the lenders.

Under 'amount due', enter the current amount you still owe on the loan. Once you have filled in the table, add the total of the amounts due and enter the total in the space below the table marked 'Total amount of secured debts'.

PART 3 – Income

Enter details of your average weekly income after tax and National Insurance.

PART 4 – Spending

Give details of all current outgoings for yourself and for your family, that is, obligations to support your wife or husband and dependent children. You should include appropriate amounts for council tax, all household bills, travel expenses, school and college fees and so on. But do not include any arrears (missed payments) on any loan or other debts. Give the amount you need to meet your current mortgage repayments.

TAKING THE FORM TO COURT

- 1 Check the form to make sure you have filled it in properly and that you have signed and dated the main part of the form and the statement of assets and liabilities.
- 2 When you take the form to the Sheriff Court you must also take with you:
 - (a) a receipt or certificate of posting to prove that you have sent a copy of the form to us.

(b) if you are using form 1, the creditor's oath. If you are using form 2, the evidence of your apparent insolvency, that is, the charge for payment or statutory demand

Or you will need evidence that you tried but failed to register a trust deed as a protected trust deed.

(c) the petition fee. This is £63 at the time of writing, but you should confirm the current charge with the Sheriff Clerk's office.

WARNING:

It is an offence to petition for your own sequestration if you know a creditor is already petitioning the court – that is, if you have been served with a warrant telling you to appear before the court. It is also an offence to petition if you have already been sequestrated and have not been discharged from that sequestration.

WHO CAN I APPROACH FOR ADVICE?

Accountant in Bankruptcy

1 Pennyburn Road

Kilwinning

Ayrshire

KA13 6SA

Phone: 0845 612 6460

Fax: 0845 612 6470

Helpline: 0845 762 6171

Local Sheriff Court

(Number in your local phone book)

Our staff and the staff at the Sheriff Court will be happy to advise you what you need to do for sequestration. **However, we and they are not allowed to advise you if sequestration is the best way to deal with your debt problem.**

The following organisations may be able to provide general advice and help:

Money Advice Centres

Citizens Advice Bureaux

Trading Standards Offices

Consult local area telephone book for addresses and numbers

Scottish Bankruptcy Advice Ltd,

1 Milton Road

Kilmarnock KA3 7HG

Tel: 01563 541 028

Fax: 01563 537 040

2a Seaford Street

Kilmarnock

KA1 2DA

The Bankruptcy Advisory Service

2 Greenways

Swanland Hill

Kingston-upon-Hull

HU14 3JN

Tel: 01482 633 034/5

Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

Tel: 0131 226 7411

For assistance in finding a solicitor with specialist knowledge about insolvency matters.

अनुरोध करने पर यह प्रकाशन सामुदायिक भाषा संस्करणों एवं
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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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