

Scotdebt – Sequestration

The sequestration procedure is the same whether you apply for your own bankruptcy or a creditor petitions to sequester you. Any assets that you hold will vest with your trustee, this means the trustee may take reasonable steps to realise the value of these assets. Any funds ingathered are used to cover the costs of sequestration and remaining funds paid to your creditors.

Your disposable income will be assessed using the common financial tool (CFT) which offsets any income in your household against all household costs to establish what, if any, level of disposable income there is. Should you be determined to have a disposable income this will be expected to be paid as a contribution for a period of four years at the end of which any debts outstanding to your creditors will be written off.

Main advantages	Main disadvantages
<ul style="list-style-type: none">▪ There is a certain outcome; at the end of your sequestration all unsecured debts will be written off.▪ Creditors have to correspond with your trustee during the period of sequestration so you shouldn't hear from them.▪ You are able to apply for sequestration online▪ If you own your vehicle outright and the value is lower than £3,000 then it is not considered an asset.▪ Your disposable income is monitored throughout your sequestration and your contribution adjusted accordingly, for example if you lose your job and have no disposable income you will not be expected to pay.▪ There are different types of sequestration available; for example if your debts are less than £17,000 and you have no assets then you may be eligible for a MAP (Minimal Asset Procedure).	<ul style="list-style-type: none">▪ If you own assets worth a significant amount of money, or have equity in your property these may require to be sold or a proposal made to your trustee in order that the value of these comes in to the sequestered estate.▪ Your credit rating may be adversely affected for up to six years.▪ You may not be able to continue working in some professions (for example sequestration individuals cannot be members of parliament or justice of the peace)▪ There are certain debts which are not included in your sequestration these include student loan, television license, court fees and any debts that are a result of fraudulent activity.▪ A notice appears in the Register of Insolvencies (www.roi.aib.gov.uk) which is free for anyone to access.

Sequestration – FAQ

1. I am in a financial mess. I owe approximately £30,000 on credit cards, store cards and loans. My husband and I own our home. Will I lose the home if I am made bankrupt?

If you are sequestrated then your property (or your share for a jointly owned property) would vest with the trustee. This means that the trustee can register an inhibition against your property and you would be prevented from selling it.

It is important to establish firstly whether there is any equity in your property. This would be established by obtaining a valuation for the property and then subtracting any debts owed to secured lenders, if there is any surplus remaining this would be classed as equity.

For example if your property was worth £100,000 and £90,000 is owed to the RBS Mortgages (the secured lender) then the equity in your property would be £10,000. If you jointly own this property with your husband then your share of the equity would be £5,000. This means that the trustee should make all reasonable attempts to realise this £5,000 equity for the benefit of creditors. This can be realised in a number of ways; it is the priority of the trustee to realise this asset without incurring excessive costs.

The trustee will first investigate if the debtor wishes to make proposals to address the equity, for example could they pay £500 per month for ten months? If that option is not suitable, would there be a third party that would buy the debtors share of the equity? Perhaps a friend or family member?

If not, then the trustee would have to consider if they would take action to sell the house and if this would be financially worthwhile to the sequestrated estate. Should the trustee choose to sell the property in order to realise the equity, then there is a legal process which must be followed.

If there is no equity in your property; the amount you owe to secured lenders is higher than the value of your property then you may be asked to pay a nominal sum, this is to release the inhibition which the trustee holds over your property.

Each case is different and is reviewed by the trustee on its individual merits.

If you are in arrears with your mortgage company and the secured lender has started proceedings to repossess your property then the trustee is not able to intervene. Should the mortgage company repossess and sell your property then any shortfall will come in to your sequestration as an unsecured debt and similarly your share in any windfall will be due to the sequestrated estate.

2. I have just been served with documentation by a sheriff officer. It says that H M Revenue & Customs have petitioned for my sequestration because of unpaid taxes. The documentation says that I should appear in court in a few weeks' time. What will happen if I don't turn up?

If you accept that the debt is due and you cannot afford to pay the debt, there is no need for you to go to court. Sequestration will be awarded in your absence. However, should you dispute the debt, have means of settling the debt in full, or wish to postpone the process for up to 42 days, either you or your legal representative must attend court in order to avoid sequestration being awarded.

3. My friend told me that if I am declared bankrupt, my trustee can demand a contribution from my earnings. How much will he take?

As per government legislation it will be assessed how much, if any, disposable income a debtor has using the Common Financial Tool. This takes into account all household income and expenses (as permitted) and any funds remaining are classed as disposable income and would be requested as a contribution.

4. I worked as a self employed taxi driver until last year. I owe H M Revenue & Customs a substantial sum by way of income tax. Also, I have lots of other personal debts. I am thinking of bankruptcy. Will the H M Revenue & Customs debt be included?

If you are sequestrated all unsecured debts will be included including any outstanding income tax, VAT and national insurance contributions. The type of debts that are not included are student loans, tv license arrears, court fees and any debts which were accrued fraudulently.

5. My employer pays me weekly direct to my bank account. Can I still have a bank account if I am bankrupt?

You are allowed to operate a bank account whilst sequestrated; it is at the discretion of the bank whether they wish to have you as a customer. It is unlikely that any bank you owe money to will accept you as a customer and some other high street banks may also refuse. There are now a wide variety of online banks who accept customers that are sequestrated however these bank accounts may incur a monthly fee.

6. My mother died last month. She was declared bankrupt six months ago and I was surprised to be told that the life assurance policy proceeds will revert to my mother's trustee. The trustee says that he will not allow us to retain any money for funeral expenses.

When your mother was sequestrated details of any insurance policies held would be requested as these are considered assets and as such vest with trustee. The trustee is not liable for funeral costs when the debtor dies after date of sequestration however if the debtor had a life assurance policy that vests in the trustee, consideration must be given by the trustee to release reasonable funds from any monies ingathered from this policy, to meet the debtor's funeral costs upon an application to the trustee by a person(s) who can demonstrate they are responsible for this cost.

7. I operated a property development company on a self-employed basis. Due to non-payment by various customers, I was forced to cease trading and declare myself bankrupt. My trustee has advised that he will convene a meeting of my creditors. Do I have to attend the meeting?

You do not have a statutory obligation to attend the meeting. However, if creditors attend the meeting and ask questions regarding the financial and trading history of your business, it would be helpful for the trustee if you are in attendance.

8. I was sequestrated five months ago. With my trustee's agreement, I continued to work on a self-employed basis. I submitted my self assessment tax return and a tax refund of approximately £500 is due. Will my trustee want me to hand this money to him?

Such refund is likely to be regarded as acquirenda. This means that had the refund been available at the date you were made bankrupt, it would have been available to the trustee. You should advise your trustee who may negotiate a contribution from you in respect of the total refund monies.

9. I was sequestrated in November 2014. I was awarded a criminal injury compensation of £6,000 which relates to a claim lodged earlier in 2014. Am I obliged to pass this money to my trustee?

Section 7(2) of the Criminal Injuries Compensation Act 1985 provides that all awards made under the criminal injuries compensation scheme to a debtor do not vest in the trustee. This came into effect on 1 April 1996.

Whilst criminal injury claims do not vest with your trustee, some other types of insurance claims do.

10. I am a heroin addict and although I have been “clean” for approximately six months, still owe money to a drug dealer. If I am sequestrated, can I avoid paying my dealer?

The debt has arisen as a result of illegal purchases and although such liabilities are not stated as being exempt from a sequestration process, it is likely that your trustee will be unwilling to accept such a debt for dividend purposes. Whilst the unpaid dealer will not pursue you through court, he may rely upon other means of collection from which the civil process of sequestration will not protect you.

If you have legitimate recorded debts to friends and/or family members they can submit a claim together with proof of the debt to your trustee. These debts would then be legally written off at the end of your sequestration. It is worth noting that any dividend your creditors receive is subject to funds coming in to the sequestration (for example you paying a contribution or having assets that can be realised) so it is possible that your friends or family members whom you owe money to may not receive anything. Whilst your debt may be legally written off it is reasonable to assume friends or family could be upset with you that they have not received settlement of the debt in full.

11. My son’s business failed and he has been made bankrupt. His biggest creditor is my best friend. I have no involvement with his business but I am very embarrassed and want to pay my best friend’s bill. Can I?

As your son is subject to formal insolvency proceedings he is not in a position to pay the debt due to your friend. However, should you wish to pay your friend, you are entitled to do so, and thereafter lodge a claim with the trustee acting in your son’s sequestration for the amount paid.

12. I have received correspondence from the accountant in bankruptcy advising that I have been sequestrated and that an agent will be contacting me. Who is an agent and what are his duties?

The agent for the accountant in bankruptcy is a licensed insolvency practitioner, who acts on behalf of the accountant in bankruptcy for a fee. The agent progresses the sequestration and the accountant in bankruptcy supervises the agent's actings. The agent's duties are as if he is the trustee in sequestration. The accountant in bankruptcy's website (www.aib.gov.co.uk) details the trustee's duties.

13. My former husband and I divorced approximately three years ago and I have heard that he was sequestrated last month. A divorce decree was granted and I got the house. Will his sequestration have any effect on the house?

A trustee is given a statutory right to apply to court for a reduction of capital award, such as a house transfer, provided that :

- *on the date the transfer was made, the person was absolutely insolvent or was rendered so by the transfer, and*
- *the date of sequestration was within five years of the date of the capital award.*

This means that your former husband's trustee may seek court authority to reverse the transfer. This issue could have serious consequences for you and much will depend upon the potential equity in the house. You should seek legal advice as a matter of urgency.

14. I am self employed and I have been served with a sequestration petition by H M Revenue & Customs. I am 57 years old and, for many years, have been saving for my retirement in a personal pension fund. Will I lose my pension monies?

The position regarding personal or private pensions changed with the implementation of the Welfare Reform and Pensions Act 1999. Neither occupational nor private pension schemes transfer to a trustee where sequestration is awarded after 29 May 2000. These provisions relate to pensions approved by H M Revenue & Customs.

Unapproved personal pension schemes, which are quite rare, continue to vest in the trustee although there are provisions to allow him to reach agreement with you if it is your sole or main pension, or if you lodge a successful application in court.

If the pension from an approved scheme comes into payment during the period of your sequestration, this will be taken into account by your trustee for the purpose of calculating a contribution.

The trustee can challenge excessive pension contributions should he consider that they were made by you for the purpose of putting cash beyond the reach of your creditors.

15. I am self employed and I have been served with a sequestration petition by HM Revenue & Customs. I am 58 years old and have been saving for my retirement by making regular lodgement in a deposit account. Will I lose the money?

Yes. A standard deposit account will be considered an asset and hence available to your trustee for the benefit of your creditors.

16. I have received correspondence indicating that one of my customers ceased trading and is bankrupt. A meeting of creditors has been held and commissioners were appointed. What are commissioners?

Commissioners are creditors of the sequestrated estate who are elected, normally at a meeting of creditors, in order to advise and assist the trustee in his management of the sequestrated estate. They have no power to deal directly with, or transact with, the sequestrated estate. Specifically, they are not allowed to purchase any of the sequestrated estate assets. General functions of the commissioners include review of the trustee's intromissions and approval of his fee.

The trustee will consult with the commissioners and have regard to any advice offered by them regarding the recovery, management and realisation of the sequestrated estate.

17. How much does it cost to apply for my own bankruptcy?

The current fee for standard procedure sequestrations is £200, should you meet the criteria for a MAP process then this is offered at a reduced fee of £90.

18. What will happen to my car if I am made bankrupt?

If the value of your car is less than £3,000 you may keep it.

If the car is worth more than £3,000 and your trustee is satisfied that you require the vehicle for work purposes e.g. because it allows you to earn sufficient to pay a reasonable contribution to your estate, you may be permitted to continue to use it as long as you keep it in a roadworthy condition. The trustee may decide to obtain an independent value for the vehicle at the end of the period of formal insolvency and either seek payment of any sum in excess of £3,000 or sell it. Generally, the position is the same if you have signed a trust deed.

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