



Inland  
Revenue

# Sequestration and winding up

We produce a wide range of leaflets, booklets and helpsheets designed to explain different aspects of the tax system in plain English, and to assist with completing tax returns. Most are free.

Some you might find useful are listed below.

Collection 1 Scotland	Summary warrant
Collection 2 Scotland	Sheriff Court proceedings
Collection 3 Scotland	Court of Session proceedings
Code of Practice 6	Collection of tax
Code of Practice 7	Collection of amounts due from employers, and contractors in the construction industry.

Our leaflet IR120 'You and the Inland Revenue' tells you more about the standard of service you can expect from us. It also tells you the steps you can take if you want to make any comments on the service you receive, or complain about the way your tax affairs have been handled.

Our IR List 'Catalogue of leaflets and booklets' gives further information about our publications, most of which you can get from any Inland Revenue Enquiry Centre or Tax Office. Addresses are in your local telephone book under 'Inland Revenue'. Most offices are open to the public from 8.30am to 4.30pm Monday to Friday, and some are also open outside these hours. Your local library or Citizens' Advice Bureau may also have copies of our leaflets.

You can get most of our forms and leaflets

- by calling our Orderline on **08459 000 404** between 8.00am and 10.00pm, seven days a week (except Christmas Day)
- by fax on **08459 000 604**
- by e-mail on **saorderline.ir@gtnet.gov.uk**
- by writing to PO Box 37, St Austell, Cornwall, PL25 5YN.

Many leaflets are also available on the Internet at **[www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)**

# What are sequestration and winding up proceedings?

Sequestration is the Scots Law term for bankruptcy; winding up is the name given to the process which ends with a liquidator being appointed to a company.

A person to whom you owe money can ask the court to sequester your estates (that is, make you bankrupt), or wind up your company if it owes the money, and so secure payment of the debt. You or your company are then termed 'insolvent', or the company will be described as being 'in liquidation'.

When someone has been sequestered his or her property passes to a Trustee in Sequestration, who is appointed by the Court to sell the property to pay the bankrupt's debts. The Trustee will also be able to claim a share of any income earned after the date of sequestration. Sequestration lasts for 3 years unless a Trustee or a creditor asks the Court to extend it.

When a company is wound up the Court appoints a liquidator, who will manage its affairs instead of the directors. The liquidator's main aim is to use the company's assets to pay its debts. He or she will also examine the former director's conduct of the company's affairs before reporting to the Department of Trade and Industry. When all assets have been used up the company is dissolved, and so ceases to exist. Any money left goes to the shareholders.

We start these proceedings when you owe us money, usually after we have taken other action and you have either not paid what you owe or made unacceptable proposals for settling your debt.

## How can you avoid insolvency proceedings?

By making payment NOW, or by making proposals for payment which are acceptable to the Inland Revenue. You should contact Inland Revenue, Enforcement Section, Elgin House, 20 Haymarket Yards, EDINBURGH, EH12 5WT (Tel: 0131 346 5900, Fax: 0131 346 5901).

## How are sequestration proceedings started?

A Messenger-at-Arms will either

- charge you to pay the amounts for which a Court Decree is held, or
- serve on you a Statutory Demand for payment. You have a right to deny that the debt referred to in the Statutory Demand is due. If you wish to do this, complete the denial slip which forms the last page of the Demand.

**At any time prior to commencement of sequestration proceedings we will consider any proposals for settlement which you wish to submit.**

## What happens if payment is still not made?

If you have not paid the sums in the Demand within 21 days, or, in the case of the Charge 14 days, you will have become apparently insolvent and we will then present a petition in the Court of Session seeking an award of sequestration.

A copy of the petition presented in Court will be served on you by a Messenger-at-Arms. You will be required to attend the Court on a stated date to say why you should not be made bankrupt.

You will receive your copy of the petition at least 6 days before the Court hearing.

## What will happen if I attend Court?

You, or someone you appoint to represent you, will be allowed to address the Court and explain why you should not be made bankrupt.

If you cannot persuade the Court that you should not be made bankrupt and you do not pay the full debt the Court will order sequestration.

## What is the practical effect of an award of sequestration?

The Court will appoint an insolvency practitioner or the Accountant in Bankruptcy as your Trustee in Sequestration to realise your assets and pay your creditors.

A bankrupt person cannot

- act as a director or promote, form or manage a company except with leave of the Court
- hold certain public offices, practice as a solicitor or act as an insolvency practitioner.

Bankrupt people are guilty of an offence punishable by imprisonment and/or fine if they obtain credit, including goods hired under a hire purchase agreement to the value of £250 or more, without revealing that they are bankrupt.

## Is the procedure different for limited companies?

Yes. The proceedings are known as 'compulsory winding up'. Although they are similar to sequestration proceedings, there are important differences

- the Messenger-at-Arms serves the demand or charge at the Registered Office of the company
- limited companies do not have the right to deny the debt is due
- the winding up petition is advertised in the Edinburgh Gazette and a local newspaper. At the same time as the public notices are arranged, a copy of the petition is sent by recorded delivery post to the Registered Office
- the company has 8 days after the service of the petition to lodge answers against it. Companies must be represented in Court by solicitors or counsel. If no answers are lodged or after answers have been disposed of, the Court will order that the company be wound up and a liquidator appointed.

## Further information

Our Codes of Practice 6 'Collection of tax' and 7 'Collection of amounts due from employers, and contractors in the construction industry' explain every stage of our collection process and practice, and your rights.

# Our service commitment to you

The Inland Revenue and Customs & Excise are committed to serving your needs well by

## *acting fairly and impartially*

We

- treat your affairs in strict confidence, within the law
- want you to pay or receive only the right amount due.

## *communicating effectively with you*

We aim to provide

- clear and simple forms and guidance
- accurate and complete information in a helpful and appropriate way.

## *providing good quality service*

We aim to

- handle your affairs promptly and accurately
- be accessible in ways that are convenient to you
- keep your costs to the minimum necessary
- take reasonable steps to meet special needs
- be courteous and professional.

## *taking responsibility for our service*

- We publish annually our customer service aims and achievements
- If you wish to comment, or make a complaint, we want to hear from you so we can improve our service. We advise you how to do this.

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## *We can provide better service if you help us by*

- keeping accurate and up to date records
- letting us know if your personal/business circumstances change
- giving us correct and complete information when we ask for it
- paying on time what you should pay.

Further information on customer service is available at Inland Revenue and Customs and Excise local offices, set out in our Charters, complaints leaflets (IR120 and Notice 1000) and Codes of Practice.

These notes are for guidance only and  
reflect the tax position at the time of writing.  
They do not affect any right of appeal.

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