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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 295**

**The Bankruptcy (Applications and  
Decisions) (Scotland) Regulations 2016**

**PART 2**

**Applications: general**

**Applications**

**4.—**(1) Any application to AiB for which a form is prescribed by these Regulations (including a review application) may be made—

- (a) by personal delivery;
- (b) by being sent to the address of AiB at 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA—
  - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000<sup>(1)</sup>); or
  - (ii) by a postal service which provides for the delivery of the document to be recorded;
- (c) by email or using the computer system provided by AiB for that purpose; or
- (d) by such other means as AiB may agree to.

(2) Such an application must specify the name and address of the applicant, and (where relevant) the details of the applicant's representative.

**Application form: first instance applications to the Accountant in Bankruptcy**

**5.—**(1) An application to AiB under the following provisions of the Act must be made in writing in Form 1 (application to the Accountant in Bankruptcy: general)—

- (a) section 31(1) (recall of sequestration: where the only ground is that the debtor has paid or is able to pay debts in full);
- (b) section 60(3)(a) (objection to election of replacement trustee);
- (c) section 66(7)(a) (trustee replacement in more than one sequestration);
- (d) section 70(2)(a) (removal of trustee);
- (e) section 72(3)(a) (declaration of office of trustee as vacant);
- (f) section 110(4)(b) (contractual powers of trustee);
- (g) section 159(3) (revocation or variation of bankruptcy restrictions order);
- (h) section 212(2)(a) (power of Accountant in Bankruptcy to cure defects in procedure); and
- (i) paragraph 3(3)(b) of schedule 2 (valuing contingent debts).

(2) Form 1 must also be used (where AiB is the applicant or trustee) for—

- (a) representations under section 66(10) of the Act (trustee replacement in more than one sequestration); and
- (b) representations under section 212(5) of the Act (curing defect in procedure).

**Application procedure: first instance applications to the Accountant in Bankruptcy**

6.—(1) This regulation applies to any application under the Act for which a form is prescribed by these Regulations (except a review application).

(2) A copy of such an application must, before the application is made, be sent by the applicant—

(a) to any person specified in the Act as a person—

- (i) to be notified of the application;
- (ii) able to make representations in relation to the application; or
- (iii) able to seek review of or to appeal the decision on that application; and

(b) to any other interested person.

(3) Under paragraph (2), the application must be sent to the proper address of the person—

- (a) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000); or
- (b) by a postal service which provides for the delivery of the document to be recorded.

(4) An applicant required to send an application under paragraph (2), or ordered to serve an application by AiB under the Act or paragraph (6), must inform the recipient in writing that the person has the right to make representations to AiB in relation to the application within any period provided for in the Act or paragraph (10).

(5) The applicant must, if requested to do so by AiB, provide AiB with evidence of delivery of that application to the persons to whom it has been delivered.

(6) AiB may require the application to be sent by the applicant to such persons as AiB deems appropriate.

(7) Where an application is incomplete it may be rejected by AiB.

(8) Where an application is unopposed it must be granted without the attendance of parties, unless AiB directs otherwise.

(9) Any representations made under the Act by any person in relation to an application must be made in writing by any means by which an application may be made (see regulation 4(1)).

(10) Where no time limit for such representations is specified in the Act or these Regulations, the representations must be made within 14 days beginning with the day on which the application was made.

(11) Paragraphs (2) to (4) and (9) do not apply to the extent that equivalent provision is made in the Act or these Regulations, or service is ordered by AiB under a provision of the Act.

(12) In paragraph (3) the “proper address” of a person means—

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a partnership, the address of any place of business of the partnership where it appears to the applicant service will be effective;
- (c) in any other case, the last known address of the person.

## **Inquiries**

7.—(1) This regulation applies where in relation to any application required to be on a form under these Regulations (including a review application) or any representation under the Act AiB considers that—

- (a) further information is required in relation to the application or representation; or
- (b) further evidence is required to substantiate any fact relevant to the application or representation.

(2) AiB may before any date set out in the Act for the decision of AiB specify by notice in writing—

- (a) any further information which is to be provided; and
- (b) any further evidence which is to be provided,

within 21 days from the date of sending that notice or such shorter period as may be specified in the notice.

(3) Where a notice is given under paragraph (2)—

- (a) any time limit set out in the Act for the decision of AiB is extended by the period specified in the notice; and
- (b) if the information or evidence specified is provided to AiB, the period allowed for the decision of AiB after the date on which it is provided is the greater of—
  - (i) the unexpired days before the original time limit would have elapsed (ignoring its extension) after the date on which that notice was given; or
  - (ii) 7 days.

(4) AiB may refuse to consider an application if, after the expiry of the period specified under paragraph (2), AiB considers that the applicant has provided insufficient information or evidence specified under that paragraph.

(5) Where AiB has set any time limit for the giving of written evidence under these Regulations, AiB must not consider any written evidence which is not given in accordance with those time limits unless satisfied that there is good reason to do so.

## **Further evidence**

8.—(1) In respect of an application for which a form is required under these Regulations (other than a review application) AiB may require in writing any person making an application or representations—

- (a) to attend a hearing, at such time and place as AiB may specify, for the purposes of giving evidence;
- (b) to give AiB, by such day as AiB may specify, such documents or information as AiB may reasonably require.

(2) Paragraph (1) does not apply unless AiB is satisfied there is a good reason to impose such a requirement following written representations, or evidence or information in response to an inquiry.

(3) Paragraph (1) does not authorise AiB to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in the Court of Session.

(4) AiB may determine such further procedure in relation to the hearing as AiB considers appropriate.

(5) Where a person is required to attend or give documents or information under paragraph (1)—

- (a) any time limit set out in the Act for the decision of AiB is extended until the date of the hearing or the day specified, as the case may be; and
- (b) following the date of the hearing or the day specified, as the case may be, the period allowed for the decision of AiB is the greater of—
  - (i) the unexpired days before that time limit would have elapsed (ignoring its extension) after the date on which the person was required by AiB to attend the hearing or give documents or information under paragraph (1); or
  - (ii) 7 days.