

2008 No. 334

BANKRUPTCY

The Bankruptcy (Scotland) Amendment Regulations 2008

Made - - - - - *6th October 2008*

Laid before the Scottish Parliament *7th October 2008*

Coming into force - - - *14th November 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(4C)(a) and (b), 72(1) and 73(1) of the Bankruptcy (Scotland) Act 1985(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Bankruptcy (Scotland) Amendment Regulations 2008 and come into force on 14th November 2008.

Amendment of the Bankruptcy (Scotland) Regulations 2008

2. In the Schedule to the Bankruptcy (Scotland) Regulations 2008(b)–
- (a) for Form 9 (debtor application without concurrence) substitute Form 9 set out in Schedule 1 to these Regulations; and
 - (b) for Form 17 (statutory declaration of low income and low assets) substitute Form 17 set out in Schedule 2 to these Regulations.

Forms received before 1st January 2009

3. The Accountant in Bankruptcy may, before 1st January 2009, accept–
- (a) a debtor application; or

(a) 1985 c.66. Section 5(4C) was inserted by section 14(3) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”). Section 73(1) contains a definition of “debtor application” that is relevant to the exercise of the statutory powers under which these Regulations are made. Section 73(1) was amended by paragraph 60 of Schedule 1 to the 2007 Act.

(b) S.S.I. 2008/82.

(b) a statutory declaration of low income and low assets,
made in Form 9 or 17 as prescribed in the Bankruptcy (Scotland) Regulations 2008 prior to the
commencement of these Regulations.

St Andrew's House,
Edinburgh
6th October 2008

FERGUS EWING
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 2(a)

“Form 9

DEBTOR APPLICATION WITHOUT CONCURRENCE

- Q1.** Enter the title you are known by (Mr, Mrs, etc), your surname and your first name. If you have middle names, enter these after your first name.

If you are, or have been, known by any other first name or surname, provide details.

- Q2.** Enter your date of birth in the order – day, month and year. Use 2 digits for the day and the month: 4 digits for the year, for example, 10/07/1975.

- Q3.** Enter your full address. Make sure that you put the town and postcode on their correct lines.

Enter your full telephone number including the STD (area) code.

Enter your mobile phone number if you have one.

Enter your e-mail address if you have one. This will help us to get in touch with you quickly if we need to.

- Q4.** If you have moved house within the last 3 years provide details of any previous addresses, including the dates you lived there.

You should include any other address where you have obtained credit within the last 3 years, **even if you didn't live there**, such as a business address.

Continue on a separate sheet if required.

1.	Title: (Mr/Mrs/etc)	
	Surname:	
	First and middle names:	
	Any other names you are, or have been, known as:	
2.	Date of birth: (DD/MM/YYYY)	
3.	Home address: (house name, street etc)	
	Town	
	County	
	Postcode	
	Telephone (including STD code)	
	Mobile	
	E-mail address	
4.	Previous address:	
	Town	
	County	
	Postcode	
	Dates address was used:	

- Q5a.** Tick 'yes' if you have been made bankrupt in Scotland within the last 5 years. If you have been made bankrupt in Scotland within the last 5 years, you cannot make yourself bankrupt again until the 5 years are over and you should not proceed with this application.
- Q5b.** Tick 'yes' if you are currently bankrupt or have ever been made bankrupt (or the equivalent) in any other country outside Scotland. State which country and the dates.
- Q5c.** Tick 'yes' if you currently own or are a director of a business in Scotland or any other country. State which country and your position in that business.
- Q5d.** Tick 'yes' if you have previously owned or have been a director of a business in Scotland or any other country in the last 5 years. State which country, your position in that business and the dates.
- Q5e.** Tick 'yes' if you currently own any heritable property in Scotland or any other country. Heritable property includes all or any part of a house, land, timeshare or any other property, including business or agricultural property. State which country and type of property.
- Q5f.** Tick 'yes' if you previously owned any heritable property in Scotland or any other country in the last 5 years. Heritable property includes all or any part of a house, land, timeshare or any other property, including business or agricultural property. State which country, type of property and the dates.

	Yes	No
5a. Have you been made bankrupt in Scotland in the last 5 years?	<input type="checkbox"/>	<input type="checkbox"/>
5b. Are you currently bankrupt or have you ever been made bankrupt (or the equivalent) in any other country?	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' state which country and the dates _____		
5c. Do you currently own or are you a director of a business in Scotland or any other country?	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' state which country and your position in that business _____		

5d. Have you previously owned or been a director of a business in Scotland or any other country in the last 5 years?	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' state which country, your position in that business and the dates.		

5e. Do you currently own, or part own, any heritable property in Scotland or any other country?	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' state which country and type of property _____		

5f. Have you previously owned, or part owned, any heritable property in Scotland or any other country in the last 5 years?	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' state which country, type of property and the dates _____		

For you to become bankrupt, there are certain criteria you must meet. These are explained in an AiB publication called 'the Debtor's Guide' which you should read before completing this section.

Q6. Tick 'yes' if you have debts of £1,500 or more. You must have total debts of £1,500 or more before you can make yourself bankrupt. This can be a single debt or a total of several debts.

Q7a. Tick 'yes' if you have been served with a Charge for Payment which was dated at least 15 days before the date you sign this application and the debt has not been paid. A Charge for Payment is a legal document with the words 'Charge for Payment' at the top. **The Charge for Payment must be enclosed with your application.**

Q7b. Tick 'yes' if you have been served with a Statutory Demand which was dated at least 22 days before the date you sign this application and the debt has not been paid. A Statutory Demand is a legal document with the words 'Statutory Demand' at the top. **The Statutory Demand must be enclosed with your application.**

Q7c. Tick 'yes' if you have ever signed a trust deed. A trust deed is a formal agreement between you and an insolvency practitioner who becomes the trustee in your trust deed.

If 'yes', tell us if your creditors objected to your trust deed becoming protected. You must enclose the letter from your trustee telling you this with your application.

Q7d. Tick 'yes' if you have ever taken part in a debt payment programme (DPP) under the Debt Arrangement Scheme. Tell us if the programme has been revoked. **If you tick 'yes' you must enclose the letter advising that your DPP has been revoked.**

Tick 'yes' if a creditor has taken further action regarding one of the debts in your DPP. **You must provide evidence that a creditor has taken further formal action regarding one of these debts.** If you are unsure, speak to a money adviser.

	Yes	No
6. Do you have debts of £1,500 or more?	<input type="checkbox"/>	<input type="checkbox"/>
7a. Have you been served with a Charge for Payment which is dated at least 15 days before the date you complete this application and the debt has not been paid?	<input type="checkbox"/>	<input type="checkbox"/>
7b. Have you been served with a Statutory Demand which is dated at least 22 days before the date you complete this application and the debt has not been paid?	<input type="checkbox"/>	<input type="checkbox"/>
7c. Have you ever signed a trust deed? (if 'No' go to question 7d)	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' did your trust deed fail to become protected?	<input type="checkbox"/>	<input type="checkbox"/>
7d. Have you ever taken part in a debt payment programme (DPP) under the Debt Arrangement Scheme? (if 'No' go to question 8)	<input type="checkbox"/>	<input type="checkbox"/>
If 'yes' has the programme been revoked?	<input type="checkbox"/>	<input type="checkbox"/>
Has any creditor taken further action against you regarding one of the debts in your DPP?	<input type="checkbox"/>	<input type="checkbox"/>

Q8a. Tick 'yes' if you have any income of your own.

Only tick 'no' if you are wholly reliant on the income of another person in your household or if you do not receive any wages, social security benefits, pension or any other income of your own.

Tick 'yes' if your weekly income is less than £229.20 a week before deductions for any tax, NI contributions etc. You do not need to include any social security benefits or tax credits in this figure. You should not include any income, social security benefits or tax credits which are paid to any other member of your household, for example, your partner.

Q8b. Tick 'yes' if you receive income-based social security benefits or working tax credits (**even if this makes your total income more than £229.20**). Examples of these benefits include Income Support, Income-related Employment and Support Allowance, Income-based Jobseekers' Allowance, Housing Benefit and Council Tax Benefit.

Q9a. Tick 'yes' if you own, wholly or jointly, all or any part of a house, land, timeshare or any other property, including business or agricultural property, in Scotland or any other country.

Answer 'yes' if your name is on title deeds, even if you do not personally contribute to any mortgage repayments, or if you are no longer making your repayments.

Q9b. Tick 'yes' if the total value of your possessions is more than £10,000. Do not include any property or land. Do not include any essential items.

Q9c. Tick 'yes' if you own any individual possession, excluding land or property, worth more than £1,000, for example cars, jewellery and money.

Note that all cash and money held in bank accounts or elsewhere should be added together.

If 'yes', provide details of each item and their approximate value in the table provided.

- | | Yes | No |
|---|--------------------------|--------------------------|
| 8a. Do you have any income of your own? | <input type="checkbox"/> | <input type="checkbox"/> |
| If 'yes' is your income less than £229.20 per week before deductions? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8b. Do you receive income related benefits, or income based jobseeker's allowance, or working tax credits? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9a. Do you own, either wholly or jointly, any land or property? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9b. Is the total value of all your possessions, excluding essential items, more than £10,000? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9c. Do you have any individual possessions, including money, worth more than £1,000? | <input type="checkbox"/> | <input type="checkbox"/> |

If 'yes', list each of these below:

	Item	Estimated Value
1.		£
2.		£
3.		£
4.		£
5.		£

Continue on a separate sheet if required

Q10. Your Trustee in Bankruptcy

- Your trustee is the person who will administer your bankruptcy.
- Your trustee will be the Accountant in Bankruptcy or you may choose to nominate an insolvency practitioner.
- The duties of the trustee will be the same no matter who it is.
- If you want an insolvency practitioner to be your trustee, they must complete and sign Form 13.

Tick 'yes' if you wish to nominate an insolvency practitioner to be your trustee.

Yes No

Q10. Do you wish to nominate an insolvency practitioner to be your trustee?

If 'yes' print the insolvency practitioner's name and address in the box below.

Name:	
Address:	
Town:	
County:	
Postcode:	

NOW SIGN THIS FORM

I certify that the information I have supplied on Form 9 is true, complete and accurate to the best of my knowledge and belief.

I have read and understood the warning below.

Signature: _____ Date: _____

Warning

It is a criminal offence under section 67(1) of the Bankruptcy (Scotland) Act 1985 for you to make a false statement in this form in relation to your assets or business or financial affairs, unless you can show that you did not know that statement was false and had no reason to believe it was false.

On summary conviction, you may be liable to a fine of up to £5,000 or to imprisonment for a maximum period of three months or to both.

If you deliberately do not disclose all relevant information or if you deliberately make a false statement when completing this form, you may become subject to bankruptcy restrictions.

”

SCHEDULE 2

Regulation 2(b)

“Form 17

Regulation 15(1)

Statutory Declaration of Low Income and Low Assets

Bankruptcy (Scotland) Act 1985, section 5A

Part 1 (to be completed by the Accountant in Bankruptcy)

	Insert debtor's name
	Insert debtor's address
	Town
	County
	Postcode
	Case Reference Number

This form should be returned to the Accountant in Bankruptcy by

	Insert date (21 days after date sent to debtor)
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An award of bankruptcy may be refused if this form is not returned by the date shown above.

Part 2 (to be completed by the debtor)

Please read the notes printed overleaf

I certify that (please tick all that apply)

- I am in receipt of income support, income-related employment and support allowance, income-based jobseekers' allowance, working tax credit, housing benefit, or council tax benefit.
- My weekly income before tax does not exceed the standard national minimum wage for a 40 hour working week (currently £229.20 per week).
- I do not have any individual asset worth more than £1,000. (see note 4 overleaf).
- The total value of my assets is not more than £10,000. (see note 4 overleaf).
- I do not own or jointly own a house or any other heritable property.

Warning:

You may be committing a criminal offence if you make a false declaration. The penalty for committing such an offence, on summary conviction, may be a fine of up to £5000 or imprisonment for up to 3 months or both.

You may also be liable to bankruptcy restrictions.

_____ (signature)

_____ (full name)

_____ (date)

Notes

1. The Accountant in Bankruptcy will send this form to a debtor who has applied for an award of sequestration under section 5(2B)(c)(ia) of the Bankruptcy (Scotland) Act 1985 where it appears that the conditions prescribed under section 5A of that Act are satisfied.

2. The debtor should complete and return this declaration within 21 days of the date of issue. The Accountant in Bankruptcy may refuse to award sequestration on the grounds that this form has not been completed.

3. Where an award is made on the basis of a statutory declaration the Accountant in Bankruptcy will be deemed to be appointed as the trustee in the sequestration.

4. The following assets are not considered for the purposes of this declaration if they are reasonably required by the debtor or a member of their household:

Clothes,

Medical equipment,

Things needed for the care and upbringing of children,

Children's toys,

Beds and bedding,

Household linen,

Chairs or settees,

Tables,

Food,

Lights or light fittings,

Heating appliances,

Curtains,

Floor coverings,

Furniture, equipment or utensils used for storing, cooking or eating food,

Refrigerators,

Materials for cleaning clothes or the house,

Furniture for storing clothes, bedding, linen, cleaning stuff and cooking utensils,

Anything used for safety in the debtor's home,

Tools to maintain and repair the home and the things in it,
Computers and accessory equipment,
Microwave ovens,
Radios,
Telephones, and
Televisions.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Bankruptcy (Scotland) Regulations 2008 (“the principal Regulations”) to prescribe amended forms to be sent to the Accountant in Bankruptcy for debtor applications in respect of the Accountant in Bankruptcy’s functions under the Bankruptcy (Scotland) Act 1985.

There are two new forms (Forms 9 and 17) which can be found in Schedules 1 and 2 to these Regulations. Both forms replace the Forms 9 and 17 as set out in the Schedule to the principal Regulations. Form 9 is the debtor application for bankruptcy without the concurrence of their creditors. Form 17 is a statutory declaration by a debtor of low income and low assets.

Regulation 3 allows the Accountant in Bankruptcy to accept applications using the old Forms 9 and 17 before 1st January 2009.

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