

EXECUTIVE NOTE

THE BANKRUPTCY (SCOTLAND) AMENDMENT REGULATIONS 2008 (SSI 2008/334)

These Regulations amend the Bankruptcy (Scotland) Regulations 2008 (SSI. 2008/82) (“the principal Regulations”). The Regulations are made in exercise of the powers conferred by sections 5(4C)(a) and (b), 72(1) and 73(1) of the Bankruptcy (Scotland) Act 1985, as amended (“the 1985 Act”) and all other powers enabling Ministers to do so. These Regulations are subject to negative resolution procedure.

Policy Objectives

These Regulations replace Form 9 (Debtor Application Without Concurrence) and Form 17 (Statutory Declaration of Low Income and Low Assets) contained in the Schedule to the principle Regulations. The Regulations also make a transitional arrangements to allow for the forms prescribed in the Bankruptcy (Scotland) Regulations 2008 to be accepted before 1 January 2009.

Form 9 (Debtor Application Form Without Concurrence) is used by debtors who wish to apply for bankruptcy without the concurrence of a qualifying creditor. The form has been in use since 1 April 2008. The Accountant in Bankruptcy is required to change the form in line with a change in the National Minimum Wage amount from 1 October 2008, and to include reference to “Income-Related Employment and Support Allowance” which will commence on 27 October 2008.

Form 17 (Statutory Declaration of Low Income and Low Assets) is issued to a debtor who meets the criteria for bankruptcy as laid out in section 5A of the 1985 Act. The Accountant in Bankruptcy is also required to change the form to come into line with the two changes described above.

The Accountant in Bankruptcy has identified a period where Form 9 and Form 17, as formerly prescribed, may be returned after commencement of these Regulations therefore Regulation 3 allows the old forms to be accepted for the period before 1 January 2009 to cover this period.

Consultation

The Accountant in Bankruptcy has sought feedback from her stakeholders, amongst whom are Citizens Advice Bureaux and Money Advice Scotland, on both forms and has made improvements to questions and notes contained in the forms to improve clarity and ease of use.

Financial Implications

There are no significant financial implications resulting from these Regulations. A Regulatory Impact Assessment has not been prepared.

Accountant in Bankruptcy
September 2008