

2008 No. 79

INSOLVENCY

BANKRUPTCY

**The Bankruptcy Fees (Scotland) Amendment (No. 2)
Regulations 2008**

<i>Made</i> - - - -	<i>4th March 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>5th March 2008</i>
<i>Coming into force</i> - -	<i>1st April 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 69A, 72 and 73(1) of the Bankruptcy (Scotland) Act 1985(a), section 225(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Bankruptcy Fees (Scotland) Amendment (No. 2) Regulations 2008 and come into force on 1st April 2008.

Amendment of the Bankruptcy Fees (Scotland) Regulations 1993

2.—(1) The Bankruptcy Fees (Scotland) Regulations 1993(c) are amended in accordance with regulations 3 to 12 of these Regulations.

(2) Any reference to an amendment of a regulation or Schedule is a reference to an amendment of a regulation or Schedule of the Bankruptcy Fees (Scotland) Regulations 1993.

Amendment of regulation 2

3. In regulation 2, after the entry for “the 1985 Act”, insert—

““Bankruptcy restrictions order” means an order made under section 56A of the 1985 Act;

“Bankruptcy restrictions undertaking” means an undertaking offered in terms of section 56G of the 1985 Act;”.

(a) 1985 c.66; section 69A was inserted by section 8 of the Bankruptcy (Scotland) Act 1993 (c.6) and section 73(1) was amended by paragraph 29 of Schedule 1 to that Act, and contains a definition of “prescribed” that is relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2007 asp 3.

(c) S.I. 1993/486, as amended by S.I. 1999/752, S.S.I. 2007/220 and S.S.I. 2008/5.

Amendment of regulation 3

4. In regulation 3, for “or permanent” where it occurs in the cross heading, and in the regulation, substitute “trustee or”.

Amendment of regulation 4

5. In regulation 4, for “or permanent” in each place occurring, substitute “trustee or”.

Amendment of regulation 5

6. In regulation 5, for “or permanent” substitute “trustee or” and, where elsewhere occurring, omit “permanent”.

Amendment of regulation 6

7. In regulation 6, for “or permanent” substitute “trustee or”.

Amendment of regulation 7

8. In regulation 7, for “or permanent” substitute “trustee or”.

Amendment of regulation 8

9. In regulation 8, at the end of paragraph (a), omit “and” and insert after paragraph (b)–
“; and
(c) in respect of the function in paragraph 22 (determination of a debtor application) on the relevant application being made whether or not it is subsequently determined in favour of the applicant”.

Amendment of regulation 9

10. In regulation 9, after “photocopying)”, omit “and”, and after “insolvencies)” insert “and 22. (determination of a debtor application)”.

Waiver of Fees

11. After regulation 9, insert–

“Waiver of Fees not Permissible

10. The fees in Part II of the Schedule to these Regulations payable to the Accountant in Bankruptcy may not be waived by the Accountant in Bankruptcy in whole or in part, but in respect of the fee payable under paragraph 18(b) of that Part of that Schedule, the Accountant in Bankruptcy may agree to its being paid in two instalments.

Refusal of Bankruptcy Restrictions Order

11. Where a sheriff does not grant an application under section 56A(1) of the 1985 Act, the sheriff may hold that in the circumstances of the case it was not reasonable to make the application.

Return of Fees

12. Any fee charged by the Accountant in Bankruptcy under paragraph 23 of Part II of the Schedule to these Regulations shall be repaid if the application for a bankruptcy restrictions

order is not granted under section 56A(1) of the 1985 Act in circumstances where the sheriff holds that it was not reasonable to make the application.”.

Amendment of Schedule

12. The Schedule is amended as follows–

(a) in Part I–

(i) in paragraph 1, omit “permanent”; and

(ii) in paragraph 2, for “and permanent trustee, or as permanent trustee,” substitute “trustee or trustee”;

(b) in Part II–

(i) omit paragraph 2;

(ii) for paragraph 18 substitute–

“ 18. In respect of protected trust deeds–

(a) for registering a protected trust deed £34.00

(b) for supervision of the trustee of a protected trust deed £200.00 ”; and

(iii) after paragraph 21 insert–

“ 22. For determination of a debtor application £100.00

23. For an application for a bankruptcy restrictions order £250.00

24. For accepting and issuing a bankruptcy restrictions undertaking £150.00

25. For registering a court order appointing a replacement trustee £19.00

26. For petitioning for the replacement of a trustee acting in more than one sequestration £200.00 ”.

Savings Provision

13. Notwithstanding regulation 2(1), in respect of petitions and applications for sequestration lodged, or protected trust deeds granted, before 1st April 2008 the Bankruptcy Fees (Scotland) Regulations 1993 shall continue to have effect as if the amendments made by these Regulations had not been made.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
4th March 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Bankruptcy Fees (Scotland) Regulations 1993 (“the principal Regulations”) to prescribe fees payable to the Accountant in Bankruptcy in respect of the exercise of the Accountant in Bankruptcy’s new functions under the Bankruptcy (Scotland) Act 1985, which are acquired on 1st April 2008 on commencement of amendments to that Act made by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

The new functions are (a) determination of debtor applications for sequestration; (b) supervision of trustees of protected trust deeds; (c) proceedings in relation to bankruptcy restrictions orders; (d) registering court orders appointing replacement trustees; and (e) petitioning the Court of Session for the replacement of a trustee acting in more than one sequestration.

The Regulations also make a minor amendment to the definitions in the principal Regulations.

The Regulations only apply to petitions and applications for sequestration lodged or trust deeds granted on or after 1st April 2008. Sequestrations and protected trust deeds prior to this date are not subject to these fees.

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