

EXECUTIVE NOTE

THE BANKRUPTCY FEES (SCOTLAND) AMENDMENT REGULATIONS 2010 SSI/2010/76

The above instrument will, if approved, be made in exercise of the powers conferred by sections 69A, 72 and 73(1) of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

This instrument amends the Bankruptcy Fees (Scotland) Regulations 1993⁽¹⁾, which came into force on 1 April 1993.

Bankruptcy Fees

Section 69A of the 1985 Act allows the Scottish Ministers to prescribe the fees and outlays payable to the Accountant in Bankruptcy in respect of the exercise of her statutory functions as described in that Act. Those fees and outlays are prescribed in the Bankruptcy Fees (Scotland) Regulations 1993.

The Bankruptcy Fees (Scotland) Regulations 1993 have been amended on several occasions to take account of the up-rating of fees and the introduction of new fees as a consequence of new statutory functions of the Accountant in Bankruptcy. The Table of Fees is contained in the Schedule to the Regulations. The fees are paid from ingathered funds in the debtor’s estate. These funds may be from contributions from the debtor or assets realised by the Trustee. For cases where the Accountant in Bankruptcy is appointed as Trustee the fees are met from the public purse as part of the overall Accountant in Bankruptcy budget from Justice Directorate when the realisation of the debtor’s estate results in insufficient funds. Where the Accountant is not appointed as Trustee the fees stated in Part 2 of the Schedule are paid to the Accountant in Bankruptcy by the Trustee from the debtor’s estate even where there is no realisation of assets or contributions from the debtor.

Purpose of the reforms in the above instrument

The purpose of the Bankruptcy Fees (Scotland) Amendment Regulations 2010 is to increase the fee for the administration of a creditor application to £200 and to increase the fee for supervision of the trustee in a protected trust deed to £250. The increase in those fees reflects the increase in administrative costs.

The Regulations also remove the fees in relation to searches in the Register of Insolvencies. The Register of Insolvencies is to be free to all users from 1 April 2010. Section 12 of the Home Owner and Debtor Protection (Scotland) Bill will, when it comes into force, remove the requirement to advertise awards of bankruptcy in the Edinburgh Gazette.

⁽¹⁾ S.I. 1993/486

Consultation

There has been no formal consultation on the reforms in this instrument. There has, however, been extensive engagement with the key stakeholders on the reforms in the Home Owner and Debtor Protection (Scotland) Bill, including Money Advice Scotland, Citizens Advice Scotland, and the Institute of Chartered Accountants of Scotland.

Financial Effect

These fees are levied to recover part of the administration costs incurred by the Accountant in Bankruptcy. They are substituted by the Public Purse as part of the overall Accountant in Bankruptcy budget from Justice Directorate
A regulatory impact assessment has not been prepared.

Accountant in Bankruptcy
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