

EXECUTIVE NOTE

THE BANKRUPTCY FEES (SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/142

The above instrument will be made in exercise of the powers conferred by Section 69A and 73(1) of the Bankruptcy (Scotland) Act 1985 (the 1985 Act). The instrument is subject to negative procedure.

Policy Objectives

This instrument amends the Bankruptcy Fees (Scotland) Regulations 1993 which came into force on 1 April 1993, by increasing fees to be levied by the Accountant in Bankruptcy from 1 April 2011 to reflect more work being done by the Agency in the area of consignations.

Bankruptcy Fees

The Bankruptcy Fees (Scotland) Regulations stipulate the charges levied by the Accountant in Bankruptcy (“AiB”) in respect of her statutory functions as described in the Bankruptcy (Scotland) Act 1985, as amended. The Table of Fees is divided into 2 parts. Part 1 lists the fees payable for the functions of the Accountant in Bankruptcy in respect of the functions carried out as interim and/or permanent trustee in a bankruptcy. Part 2 lists the fees payable for all other statutory functions of the Accountant. The Bankruptcy Fees (Scotland) Amendment Regulations 2011 introduces amended fees to Part 2.

Particular Fees to be amended

Consignations are monies belonging to creditors at the close of bankruptcies and protected trust deeds which have not been able to be paid by the trustee. Under the 1985 Act, the trustee must consign these funds. The purpose of the Bankruptcy Fees (Scotland) Amendment Regulations 2011 is to increase two fees which are levied by AiB in respect of the consigning of funds into a suitable account by the AiB on application of the trustee and the uplift of consigned funds from the account by the AiB on application of the creditor.

The fees to be increased are:

- The fee for lodging any dividend which is unclaimed by creditors in an appropriate bank or institution set aside for a payment to a creditor or creditors. This fee will increase from £13 to £26 in respect of each creditor; and
- The fee for uplifting any unclaimed dividend consigned in an appropriate bank or institution. This fee will also increase from £13 to £26.

The fee rates have been set to meet the AiB administration costs of undertaking the work in respect of consignations. AiB are working to modernise the consignment system, return money to creditors and attempt to ensure money is not consigned in future. The increased fee rates reflect the increased work in this area.

The fees for consignment are paid from ingathered funds due to each creditor as a dividend. At the commencement of any bankruptcy or trust deed, creditors are asked to make a claim for the amount of money they are owed by the debtor. If money is ingathered during the bankruptcy or trust deed and there is enough to pay a dividend to creditors, creditors are advised of this fact. However, in some cases the creditor does not claim the dividend, which is then consigned to a suitable account by the AiB. Where the creditor comes forward at a later date, the funds held in the consignment account can be uplifted and paid to the creditor by the AiB. For both consigning and uplifting monies the fee is recouped from the amount payable as a dividend to the creditor. Where funds have been consigned for at least seven years, these are surrendered to the Treasury.

Amendment of Part II of the Schedule to the Bankruptcy Fees (Scotland) Regulations 1993.

A minor amendment is also made to Column 1 of item 21 in Part II of the Schedule to the Bankruptcy Fees (Scotland) Regulations 1993. This particular fee is for uplifting any unclaimed dividend that has previously been lodged in an appropriate bank or institution as part of the consignment process, and the change has been made to clarify the meaning of that particular item.

Financial Effect

The Regulations increase fees which can be levied by the AiB in the area of consignations. All other AiB fees are being frozen for 2011/2012 at 2010/2011 levels. This increase will allow AiB to progress further towards full cost recovery and reflects increased work by AiB in the area of consignations.

Creditors are advised when a dividend is to be paid. Where creditors do not claim the dividend, this is consigned and a fee levied. The effect of the Regulations will be to reduce the money due to each creditor, but only when a claim is not made. Creditors can avoid these fees completely by claiming their dividend at the appropriate time. AiB is working with creditors to attempt to ensure that money is not consigned in future.

A Regulatory Impact Assessment has not been prepared.