
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 227

The Bankruptcy Fees (Scotland) Regulations 2014

Citation and commencement

- 1.—(1) These Regulations may be cited as the Bankruptcy Fees (Scotland) Regulations 2014.
(2) They come into force on 1st April 2015.

Interpretation

2. In these Regulations—

- “the 1985 Act” means the Bankruptcy (Scotland) Act 1985;
“bankruptcy restrictions order” means an order made under section 56A of the 1985 Act(1);
“debtor who has few assets” means a debtor to whom section 5(2ZA) of the 1985 Act(2) applies;
“debtor’s contribution” has the meaning given by section 5D(1) of the 1985 Act(3);
“expenses of realisation” means any outlays incurred by the trustee in realising the debtor’s estate which in the course of normal business practice are deducted from the price payable to the trustee;
“member State liquidator” has the meaning given by section 73(1) of the 1985 Act(4);
“table of fees” means the Table of Fees in the Schedule;
“statutory fee” means any fee payable under an enactment;
“the statutory meeting” has the meaning given by section 20A of the 1985 Act(5);
“trading expenses” means any outlays incurred by the trustee in the carrying on of any business of the debtor;
“trust deed”, where granted before 1st April 1993, means a voluntary trust deed granted by or on behalf of a debtor, whereby the debtor’s estate is conveyed to the trustee for the benefit of the creditors of that debtor generally and, where granted on or after that date, has the meaning assigned by section 5(4A) of the 1985 Act(6); and
“trustee vote” is to be construed in accordance with section 24(1) of the 1985 Act(7).

(1) Section 56A was inserted by section 2(1) of the 2007 Act.
(2) Section 5(2ZA) is inserted by section 5(1)(b) of the 2014 Act (sequestrations where the debtor has few assets; the “minimal asset process” (MAP)).
(3) Section 5D is inserted by section 3(1) of the 2014 Act.
(4) The definition of “member State liquidator” was inserted by regulation 19 of the Insolvency (Scotland) Regulations [S.S.I. 2003/2109](#).
(5) Section 20A was inserted by paragraph 9 of Schedule 1 to the 1993 Act and amended by paragraph 1 of schedule 6(1) to the 2007 Act.
(6) Section 5(4A) was inserted by section 3(4) of the 1993 Act. Section 5(4A)(a) is amended by schedule 3, paragraph 4(b) of the 2014 Act.
(7) Section 24(1) was amended by section 11(4)(a) of the 2007 Act.

Fees and outlays as interim trustee or trustee

3. The fees payable to the Accountant in Bankruptcy in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration, which are specified in column 1 of Part 1 of the table of fees are the fees specified in relation to those functions in column 2 of the table of fees.

4. The outlays payable to the Accountant in Bankruptcy in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration are those outlays actually, necessarily and reasonably incurred in respect of the exercise of any of those functions and include, but are not limited to, outlays so incurred in respect of—

- (a) the making of searches in any public register;
- (b) the valuation of property;
- (c) legal services and related expenses;
- (d) estate agency services;
- (e) the services of auctioneers and valuers;
- (f) services related to taxation matters; and
- (g) travel and subsistence expenses.

5. Any fees and outlays payable to the Accountant in Bankruptcy in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration are due for payment from the sequestrated estate where—

- (a) the Accountant in Bankruptcy has made a determination of its fees and outlays calculated in accordance with these Regulations, under and in accordance with, as appropriate, one of these provisions of the 1985 Act—
 - (i) section 26A(3)(b)(8) (determination of fees and outlays where Accountant in Bankruptcy was interim trustee and some other person becomes trustee);
 - (ii) section 53(1), as modified by section 53A(2)(9) (determination of fees and outlays at end of each accounting period where Accountant in Bankruptcy is trustee);
 - (iii) section 58A(4)(a)(10) (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee); and
- (b) the period within which an appeal against such a determination may be taken to the sheriff has expired or, if an appeal is so taken, that appeal has been determined, under, as appropriate, one of these provisions of the 1985 Act—
 - (i) section 26A(5) and (6)(11);
 - (ii) section 53(4), as modified by section 53A(2);
 - (iii) section 58A(5) and (6)(12).

Other fees

6. The fees payable to the Accountant in Bankruptcy in respect of the exercise of that office's functions, other than as interim trustee or trustee in a sequestration, specified in column 1 of Part 2 of the table of fees are the fees specified in relation to those functions in column 2 of the table of fees.

(8) Section 26A was inserted by paragraph 15(1) of Schedule 1 to the 1993 Act.

(9) Section 53A was inserted by paragraph 46 of schedule 1 to the 2007 Act.

(10) Section 58A was inserted by paragraph 26 of Schedule 1 to the 1993 Act. Section 58A(4)(a) is amended by paragraph 32 of schedule 3 to the 2014 Act.

(11) Section 26A(5) and (6) is amended by section 40(1)(c) and (d) of the 2014 Act.

(12) Section 58A(5) and (6) is amended by section 42(2)(c) and (d) of the 2014 Act.

7. A fee payable under regulation 6 is payable even although it is payable by or on behalf of the Accountant in Bankruptcy in the exercise of that office's functions as interim trustee or trustee in a sequestration.

Manner of payment

8. A fee payable to the Accountant in Bankruptcy for a function specified in Part 2 of the table of fees is due for payment—

- (a) on the application for these services being made to the Accountant in Bankruptcy, in respect of—
 - (i) item 14 (removal of trustee and trustee not acting);
 - (ii) item 15 (declaration of office of trustee as vacant);
 - (iii) item 16 (replacement of trustee acting in more than one sequestration);
 - (iv) item 17 (appointment or reappointment of trustee where newly identified estate);
 - (v) item 18 (application by trustee for a direction);
 - (vi) item 19 (curing defects in procedure);
 - (vii) item 21 (conversion of trust deed into sequestration);
- (b) in respect of the functions specified in item 2 (supervision of sequestration proceedings)—
 - (i) at the end of each 12 month period of supervision; or
 - (ii) if the trustee is discharged during a 12 month period, in advance of the granting of a certificate of discharge under section 57(3)(13) of the 1985 Act;
- (c) in respect of the functions specified in item 8(c) (protected trust deed supervision)—
 - (i) at the end of each 12 month period of supervision; or
 - (ii) if the trustee is discharged during a 12 month period, in advance of the date of discharge of the trustee under regulation 25 of the Protected Trust Deeds (Scotland) Regulations 2013(14);
- (d) in respect of the functions specified in item 12 (election of replacement trustee by trustee vote), on the submission of the relevant report to the Accountant in Bankruptcy;
- (e) in respect of the functions specified in item 22 (determination of debtor applications)—
 - (i) on the application being made to the Accountant in Bankruptcy; and
 - (ii) if paragraph 1 of Schedule A1 to the 1985 Act(15) ceases to apply to the debtor, on receiving a request from the Accountant in Bankruptcy for the fee due under item 22(b) taking account of the fee already paid under item 22(a);
- (f) in respect of any other such function, on performance by the Accountant in Bankruptcy of that function.

9. A fee payable to the Accountant in Bankruptcy in respect of the functions specified in item 22 (determination of debtor applications) of Part 2 of the table of fees is payable whether or not it is subsequently determined in favour of the applicant.

10. A fee payable to the Accountant in Bankruptcy in respect of a function specified in Part 2 of the table of fees by an interim trustee, trustee in a sequestration or trustee under a protected trust

(13) Section 57(3)(b) was amended by paragraph 1 of schedule 6(1) to the 2007 Act.

(14) S.S.I. 2013/318.

(15) Schedule A1 is inserted by section 5(2) of and schedule 1 to the 2014 Act ("minimal asset process" (MAP) cases considered under section 5(2ZA) of the 1985 Act).

deed is payable by the trustee whether or not there are subsequently funds available for distribution from the debtor's estate to meet that fee.

Waiver of fees not permissible

11.—(1) Subject to paragraphs (2) and (3), the fees in Part 2 of the table of fees payable to the Accountant in Bankruptcy may not be waived by the Accountant in Bankruptcy in whole or in part.

(2) For the purposes of regulation 8(c)(ii), the Accountant in Bankruptcy may waive the balance due, if the debtor who granted the protected trust deed failed to meet the debtor's obligations for the purposes of regulation 24(2)(a) of the Protected Trust Deeds (Scotland) Regulations 2013.

(3) For the purposes of regulation 8(e)(ii), the Accountant in Bankruptcy may waive the balance due, unless the debtor provided false or misleading information in the debtor application.

Repayment of fees - refusal of bankruptcy restrictions order

12.—(1) Where the Accountant in Bankruptcy or a sheriff does not grant an application for a bankruptcy restrictions order under section 56A(1) of the 1985 Act, the Accountant in Bankruptcy or the sheriff may hold that in the circumstances of the case it was not reasonable to make the application.

(2) In that event, any fee charged by the Accountant in Bankruptcy under item 23 of Part 2 of the table of fees must be repaid.

Sequestrations and trust deeds before 1st April 2015

13.—(1) Except as mentioned in paragraph (4), nothing in these Regulations has effect as regards any sequestration in respect of which—

- (a) the petition is presented before 1st April 2015; or
- (b) a debtor application was made before that date.

(2) Except as mentioned in paragraph (4), nothing in these Regulations has effect as regards any trust deed which was granted before 1st April 2015.

(3) The Bankruptcy Fees etc. (Scotland) Regulations 2012(**16**), continue to apply and have effect in relation to any such sequestration or trust deed.

(4) This Regulation does not apply in respect of items 18, 20 and 21 in Part 2 of the table of fees.

Revocation of Bankruptcy Fees etc. (Scotland) Regulations 2012

14. The Bankruptcy Fees etc. (Scotland) Regulations 2012 are revoked (subject to regulation 13).

St Andrew's House,
Edinburgh
20th August 2014

FERGUS EWING
Authorised to sign by the Scottish Ministers