
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 80

**The Bankruptcy (Miscellaneous
Amendments) (Scotland) Regulations 2015**

Citation and commencement

1. These Regulations may be cited as the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2015 and come into force on 1st April 2015.

Amendment of the Bankruptcy (Scotland) Regulations 2014

2.—(1) The Bankruptcy (Scotland) Regulations 2014(1) are amended in accordance with this regulation.

(2) In regulation 19 (certificate of deferral) after “section 54D(4)(b) or (6)(b)” insert “of the 1985 Act”.

(3) In regulation 24 (sequestration before 1st April 2015)—

(a) in paragraph (1)(a)(ii) for “was” substitute “is”; and

(b) after paragraph (2)(b) insert—

“(c) regulation 15 of these Regulations and Form 26(2);

(d) regulation 22 of these Regulations and Forms 29 and 30(3).”.

(4) After regulation 24 insert—

“Trust deed granted before 1st April 2015

25. These Regulations, except regulation 22 and Forms 29 and 30, have no effect as regards any trust deed granted before 1st April 2015.”.

(5) In Schedule 1 (forms)—

(a) for each form listed in the table in Schedule 1 to these Regulations substitute the Form so numbered in Schedule 1 to these Regulations;

(b) in Form 11 (application for deferral)—

(i) for “I confirm;” substitute “I confirm that;” and

(ii) for “section 3 of the Bankruptcy (Scotland) Act 1985 (as amended).” substitute “section 3 of the Bankruptcy (Scotland) Act 1985 (as amended);”;

(1) [S.S.I. 2014/225](#).

(2) Form 26 (notice by trustee of proceedings to obtain authority in relation to debtor’s family home) is the form prescribed under section 40(3B) of the Bankruptcy (Scotland) Act 1985 (c.66) (“the 1985 Act”). Section 40 of the 1985 Act was amended by the Civil Partnership Act 2004 (c.33), Schedule 28, paragraph 36, the 2007 Act, schedule 1, paragraph 36 and schedule 6, the 2010 Act, section 11 and the 2014 Act, section 49.

(3) Form 29 (moratorium - notice of intention to apply) is the written notice to be given by a person under section 4A(1) of the 1985 Act. Form 30 (moratorium - notice of intention to apply (trust, partnership etc.)) is the written notice to be given by a person under section 4B(1) of the 1985 Act. Sections 4A and 4B were inserted by the 2014 Act, section 8.

- (c) in Form 12 (trustee application for authority to resign office) for “section 54E(4) of the Bankruptcy (Scotland) Act (as amended)” substitute “section 54E(4) of the Bankruptcy (Scotland) Act 1985 (as amended)”;
- (d) in Form 14 (debtor application)—
- (i) in section 3.1 for “will considered” substitute “will be considered”;
 - (ii) in section 3.6 for “If “YES” is the Charge for Payment dates at least 15 days prior to you completing, signing and dating this application?” substitute “If “YES” is the date on which the Charge for Payment was served on you at least 15/29* (*delete as appropriate) days prior to you completing, signing and dating this application?”;
 - (iii) in section 3.7 for “If “YES” is the Statutory Demand dated at least 22 days prior to you completing, signing and dating this application?” substitute “If “YES” is the date on which the Statutory Demand was served on you at least 22 days prior to you completing, signing and dating this application?”;
 - (iv) in section 6.5 for “compete” substitute “complete”;
 - (v) in section 6.7—
 - (aa) for “From” substitute “from”; and
 - (bb) for “compete” substitute “complete”;
 - (vi) at the end of section 8.6 insert on a new line-
 - (vii) “Proposed frequency of subsequent payments _____”;
 - (viii) in section 11.1 for “Do you, or have, you owned property in the last 5 years which is not your current residence?” substitute “Do you currently own property, or have you owned property in the last 5 years, which is not your current residence?”;
 - (ix) for the first paragraph of the Money Adviser Declaration substitute—

“I am a money adviser within the meaning of the Bankruptcy (Scotland) Act 1985 (as amended). I confirm that I have provided the debtor named in section 5 of this form with advice in accordance with section 5C of that Act.”;
 - (x) in the section headed “Automatic credit/HPI checks”—
 - (aa) for the heading substitute “Credit/HPI checks”;
 - (bb) for “will carry out automatic” substitute “may carry out”; and
 - (cc) “will carry out these checks in all” substitute “may carry out these checks in some”;
 - (xi) in the Statement of Undertakings—
 - (aa) in undertaking 2 for “an interest in on” substitute “an interest on”;
 - (bb) in undertaking 6 for “my bankruptcy” substitute “my bankruptcy.”;
 - (cc) after undertaking 15 insert on a new line—
 - (dd) “**Note for completion** – If you are signing as executor, or entitled to be appointed as executor, on the estate of a deceased debtor, undertakings 1, 7, 8, 10, 14 and 15 do not apply. You are giving the remaining undertakings, as appropriate, in relation to the position of the deceased debtor or the deceased debtor’s estate or the position of executor on the estate of the deceased debtor.”; and
 - (xii) in the Statement of Truth after “I have read and understood the warning below.” insert on a new line—
 - (aa) “**Note for completion** – If you are signing as executor, or entitled to be appointed as executor, on the estate of a deceased debtor, you are agreeing

and certifying in relation to the estate of the deceased debtor being made bankrupt. In relation to the warning below, the reference to bankruptcy restrictions does not apply.”;

- (e) in Form 15 (debtor application (trust, partnership, etc.))—
 - (i) for the heading “Section 4 – Concurring Creditor” substitute “Section 4 – Concurring Creditor (if applicable)”; and
 - (ii) in section 4.4 for “petition” substitute “application”; and
- (f) in Form 26 (notice by trustee of proceedings to obtain authority in relation to debtor’s family home) for “40(1)(b)” substitute “40(2) or (3)”.

(6) In Schedule 2 (register of insolvencies), in section E (winding up and receivership of business associations) after “Date of appointment of office holder(s)” insert on a new line “Date of termination of appointment of office holder(s)”.

Amendment of the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014

3.—(1) The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014(4) are amended in accordance with this regulation.

(2) After regulation 2 insert—

“Dispensing power

2A. The Accountant may relieve any person from the consequences of any failure to comply with a provision of these Regulations that is shown to be due to mistake, oversight or other reasonable cause.”.

- (3) In regulations 3(1) and 5(1), for “Form” substitute “form”.
- (4) In regulation 4(1)(h), for “bankruptcy” substitute “Bankruptcy”.
- (5) In regulation 5(2)(a)(iii) (procedure for first instance applications to AiB), for “able to review or appeal” substitute “able to seek review of or to appeal”.
- (6) In regulation 19 (reference to the sheriff: time limits)—
 - (a) for “refer or remit a matter to the sheriff” substitute “refer or remit a matter to the court”;
 - (b) in paragraph (a)—
 - (i) for “the sheriff” the first time it occurs substitute “the court”;
 - (ii) for “the sheriff” the second time it occurs substitute “that court”; and
 - (c) in paragraph (b) for “sheriff’s (or the court’s) disposal” substitute “court’s disposal”, and in the title of Part 4 (Reference to sheriff and review by Accountant in Bankruptcy) and the heading to regulation 19, for “sheriff” substitute “court”.
- (7) After regulation 21, insert—

“Review proceedings: persons assisting the Accountant in Bankruptcy

21A.—(1) In relation to a review application the Accountant may take account of the views of any independent person whom the Accountant appoints for that purpose.

(2) The Accountant may disclose information held about review applications to persons appointed under paragraph (1) to be used only for the purpose specified in that paragraph.”.

(8) In the Schedule—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) for Form 4 (report of statutory meeting appointing replacement trustee) substitute the Form 4 set out in Schedule 2 to these Regulations;
- (b) in Form 5 (grant of removal of trustee), for “may” substitute “must”; and
- (c) in Form 6 (conversion of protected trust deed into bankruptcy: section 59A application)—
 - (i) in the third box below “Trustee Address:”, insert—

“I consent to my appointment as Trustee
Signature of Trustee _____ Date _____”;

and
 - (ii) for “EC Regulation of earlier proceedings” substitute “EC Regulation (conversion of earlier proceedings)”.

Amendment of the Bankruptcy Fees (Scotland) Regulations 2014

4. In regulation 13 (sequestrations and trust deeds before 1st April 2015) of the Bankruptcy Fees (Scotland) Regulations 2014⁽⁵⁾—

- (a) in paragraph (1)(b) for “was” substitute “is”; and
- (b) for paragraph (4) substitute—

“(4) This regulation does not apply in respect of—

 - (a) items 18, 20 and 21 in Part 2 in the table of fees; or
 - (b) the revocation of items 10, 11, 12 and 13 in Part 2 of the Table of Fees in Schedule 1 to the Bankruptcy Fees etc. (Scotland) Regulations 2012⁽⁶⁾.”.

St Andrew’s House,
Edinburgh
25th February 2015

FERGUS EWING
Authorised to sign by the Scottish Ministers

⁽⁵⁾ S.S.I. 2014/227.
⁽⁶⁾ S.S.I. 2012/118.