
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

**The Bankruptcy (Certificate for
Sequestration) (Scotland) Regulations 2010**

Citation, commencement and extent

1. These Regulations may be cited as the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010 and come into force on 15th November 2010.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Bankruptcy (Scotland) Act 1985;

“the 1986 Act” means the Insolvency Act 1986(1); and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(2).

(2) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000(3), which has been recorded and is consequently capable of being reproduced.

Authorised persons

3.—(1) The following are classes of persons prescribed for the purposes of section 5B(5)(a) of the Act as persons authorised to grant a certificate for sequestration—

(a) persons who—

(i) are qualified to act as insolvency practitioners in accordance with section 390 of the 1986 Act(4); or

(ii) work for an insolvency practitioner as defined in regulation 3(1)(a)(i), who have been given authority by that insolvency practitioner to act on behalf of that insolvency practitioner in the granting of a certificate for sequestration; and

(b) persons who—

(i) work as money advisers for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; or

(ii) are approved for the purposes of the Debt Arrangement Scheme; or

(1) 1986 c.45.

(2) 2002 asp 17.

(3) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

(4) 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18; the Insolvency Act 2000 (c.39), section 8, Schedule 4, part 11, paragraph 16(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005, S.S.I. 2005/465, article 2, Schedule 1, paragraph 18(3); the Mental Capacity Act 2005 (c.9), section 67(1), (2), Schedule 6, paragraph 31(3), Schedule 7; and the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, paragraph 6.

- (iii) work as money advisers for a citizens advice bureau which is a full member of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland; or
- (iv) work as money advisers for councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

(2) An authorised person for the purposes of section 5B(5)(a) of the Act shall not be an associate of the debtor in accordance with section 74 of the Act(5).

Further provisions relating to certification

4. Prior to granting a certificate for sequestration, an authorised person must—
- (a) provide the debtor with a copy of a Debt Advice and Information Package referred to in section 10(5) of the 2002 Act;
 - (b) advise the debtor of the options of a voluntary repayment plan, a debt payment programme under the Debt Arrangement Scheme or a trust deed; and
 - (c) advise the debtor of the consequences of sequestration and that an award of sequestration, if granted, is recorded in a public register and may result in one or more of—
 - (i) the debtor being refused credit, or being offered credit at a higher rate, whether before or after the date of the debtor being discharged;
 - (ii) the debtor not being able to remain in his/her current place of residence;
 - (iii) the debtor being required to relinquish property which the debtor owns;
 - (iv) the debtor requiring to make contributions from income for the benefit of creditors;
 - (v) damage to the debtor’s business interests and employment prospects;
 - (vi) the debtor still being liable for some debts;
 - (vii) the debtor’s past financial transactions being investigated; and
 - (viii) other restrictions or requirements imposed on the debtor as a result of the debtor’s own circumstances and actions.

The form and manner of certificate

5.—(1) A certificate for sequestration granted by an authorised person on the application of a debtor shall be in the form of the Form set out in the Schedule to these Regulations.

(2) The certificate for sequestration must be signed and dated by an authorised person and signed and dated by the debtor to the effect provided in the form of the Form set out in the Schedule to these Regulations.

(3) A valid certificate for sequestration must in the case of the authorised persons referred to in regulation 3(1) be printed on the headed notepaper of the organisation to which the authorised person belongs, where the authorised person belongs to an organisation, or in other cases on the authorised person’s headed notepaper.

Fees

6. A nil fee is chargeable for granting a certificate for sequestration.

(5) 1985 c.66. Section 74 was amended by the Civil Partnership Act 2004 (c.33), section 261(2), Schedule 28, paragraph 40; the Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82), regulation 8 and the Occupational Pension Schemes (Investment) Regulations 1996, S.I. 1996/3127, regulation 3(2).

The prescribed period

7. The time period prescribed for a granted certificate for sequestration for the purposes of section 5(2B)(c)(ib) of the Act(6) is 30 days.

St Andrew's House,
Edinburgh

Authorised to sign by the Scottish Ministers

(6) Section 5(2B)(c)(ib) was inserted by section 9(2) of the Home Owner and Debtor Protection (Scotland) Act 2010.