
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe matters which fall to be prescribed by the Scottish Ministers under the Bankruptcy (Scotland) Act 2016 which consolidates Scottish bankruptcy legislation (“the Act”).

They apply from 30th November 2016 to sequestrations where the creditor petition for sequestration is presented, or the debtor application for sequestration is received by the Accountant in Bankruptcy (“AiB”), on or after that date (see section 236 of the Act).

They re-enact, with modifications, provisions of the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010, the Bankruptcy (Scotland) Regulations 2014, the Common Financial Tool etc. (Scotland) Regulations 2014, and the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014.

Regulation 3 and schedule 1 provide for the main forms to be used in relation to sequestration.

Regulation 4 prescribes persons who can act as money advisers in relation to sequestration, including the classes of—

- insolvency practitioners and persons who work for them who have been given authority by the insolvency practitioner to act on behalf of that insolvency practitioner

- persons approved for the purposes of the Debt Arrangement Scheme

- persons working as money advisers for organisations awarded Type 2 against Scottish National Standards for Information and Advice Provision, full bureau members of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland; or councils.

Regulation 5 provides for who may not be a money adviser, including those whose approval is revoked by AiB in specific cases.

Regulation 6 prescribes additional matters on which debtors must obtain money advice in making a debtor application (an application made by a debtor to the Accountant in Bankruptcy for an award of sequestration under the Act). Regulation 7 sets out procedural requirements for obtaining money advice in connection with such a debtor application.

Regulations 8 to 10 provide for a Certificate for Sequestration of a debtor’s estate by money advisers who certify the debtor has demonstrated he or she is unable to pay his or her debts as they become due. A money adviser is entitled to rely on statements and paperwork provided by the debtor, in particular information provided as to financial circumstances declared in the form, which can be included in the debtor application. The prescribed period for granting a certificate is the 30 days before the date on which a debtor may apply (see section 2(10) of the Act). This is intended to allow flexibility to sign the certificate and debtor application on the same day.

Regulation 11 provides for when a debtor must be provided with a debt advice and information package prior to presentation of a creditor petition for sequestration.

Regulation 12 makes procedural provision for debtor applications.

Regulation 13 provides for “prescribed payments” of social security benefits as part for the criteria for eligibility for the Minimal Asset Process (“MAP”) where the debtor has few assets under section 2(2) of the Act. Regulation 14 lowers the total amount of assets a debtor may have before AiB is to consider whether the MAP ceases to apply to a debtor.

Part 3 of the Regulations makes provision for about the method for determining an appropriate amount of a living debtor’s income to be paid to a trustee after sequestration of the debtor’s estate,

known as the “common financial tool” – see section 89 of the Act. It is used in making debtor contribution orders under Part 6 of the Act which fix the contribution a debtor must pay from income received after sequestration for the benefit of creditors.

Regulations 15 to 16 provide for the common financial tool, how income and expenditure of the debt is established by reference principally to the Common Financial Statement (the “CFS”) published by the Money Advice Trust. The debtor’s surplus income in excess of the lower of the debtor’s expenditure, or the “trigger figures” which are part of the CFS for a reasonable amount of expenditure is the basis of the contribution, and an amount of reasonable expenditure may be allowed to the debtor which exceeds those trigger figures. The debtor can retain up to an amount subject to certain limits from regular payments towards an allowance to meet contingencies which may arise for the debtor. Guidance is also to be set out by AiB on types of income and expenditure, verifying income and expenditure and money advisers’ functions. Supporting statements, explanation and evidence are required (regulation 17). AiB can in some cases related to debtor applications notify the Money Advice Trust where it appears money advisers have breached licence restrictions (regulation 18).

Regulation 20 provides for instructions by the debtor or trustee under section 94 of the Act to an employer or third party due to make payment to the debtor for deductions from earnings or other income. It also provides for how the instruction affects the recipient and what happens if the employer or third person refuse to pay the deduction.

Regulation 21 prescribes the circumstances in which a creditor may state the amount of the creditor’s claim in foreign currency for voting purposes at a statutory meeting and submission of claims to a trustee under sections 46 and 125 of the Act respectively.

Regulation 22 prescribes the manner in which the trustee is required to convert a creditor’s claim made in foreign currency for the purposes of proceedings at a statutory meeting and the adjudication of creditors’ claims under sections 48 and 126 of the Act respectively.

Regulation 24 provides for how notice is given to the debtor under section 87(8) of the Act where the trustee abandons to the debtor heritable property included in the debtor’s sequestrated estate.

Regulation 25 provides for the courses of financial education which a debtor may be required to undertake by the trustee under section 117 of the Act.

Regulation 26 prescribes 8% per annum as the rate of interest to be paid on the preferred debts and the ordinary debts between the date of sequestration and the date of payment of the debt for the purposes of section 129 of the Act (order of priority in distribution of the debtor’s estate).

Regulation 28 provides that the premium of any bond of caution or other security given by an insolvency practitioner in relation to acting as interim trustee or trustee may be taken into account as part of the insolvency practitioner’s outlays in the sequestration.

Regulation 29 provides for forms of notice to be given by a person to trigger the moratorium on debt enforcement by diligence having effect under Part 15 of the Act.

Regulation 30 and schedule 2 re-enact provision for the register of insolvencies which AiB maintains (section 200(1)(c) of the Act refers).

Part 7 of the Regulations makes modifications of the Act in its application to limited partnerships.

Regulation 32 revokes the instruments re-enacted, subject to regulation 33 which saves provision for sequestrations where the creditor petition for sequestration is presented, or the debtor application for sequestration is received by AiB, before 30th November 2016, and for trust deeds executed before that date. For the avoidance of doubt, moratorium notices before that date of intention to apply under the Act will also be given effect to (regulation 34).

Regulation 21 of the Bankruptcy (Scotland) Regulations 2014 which restated the law on reserved matters prescribing £800 as the maximum amount which may be claimed as a preferred debt by an employee by way of remuneration or by a person under the Reserve Forces (Safeguard of

Employment) Act 1985 remains in force (paragraphs 2 and 3 of schedule 3 of the Act consolidating paragraphs 5 and 6 of schedule 3 of the Bankruptcy (Scotland) Act 1985 refer).

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>.