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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

**The Bankruptcy (Scotland) Regulations 2016**

**PART 2**

Sequestration process

**Debt advice and information package**

**11.**—(1) Subject to paragraph (2), the time prescribed for the purposes of section 3(1) of the Act is not less than 14 days before the presentation of the petition and not more than 12 weeks before the presentation of the petition.

(2) Paragraph (1) (and so the requirement to provide the debtor with a debt advice and information package in that section) does not apply where it is averred that the address of the debtor is not known<sup>(1)</sup>.

**Debtor applications**

**12.**—(1) A debtor application to AiB—

- (a) in the case of an application by a living debtor, or by the executor (or a person entitled to be appointed executor) on the estate of a deceased debtor, must be in Form 1;
- (b) in the case of an application by an entity referred to in section 6(1) of the Act, must be in Form 3 accompanied by a statement of assets and liabilities in Form 4.

(2) Where in a debtor application the debtor nominates an insolvency practitioner to act as the trustee in the sequestration and the insolvency practitioner agrees to act, the application must be accompanied by the insolvency practitioner's written undertaking to act as the trustee in Form 12.

(3) The Accountant in Bankruptcy or Depute Accountant in Bankruptcy must daily sign a Schedule in Form 7 listing those debtors whose estates have been sequestrated that day, and must enter the Schedule into the register of insolvencies.

(4) AiB must notify in writing debtors in respect of whom an award of sequestration has been made without delay after the award of sequestration.

(5) Where AiB refuses to award sequestration, the Accountant in Bankruptcy or Depute Accountant in Bankruptcy must complete and sign a Form 8 in respect of the debtor and without delay send a copy to the applicant, or applicants, in the debtor application.

(6) Where AiB awards sequestration the certified notice of the determination to be sent by AiB to the Keeper for recording in terms of section 26(2) of the Act must be in Form 9 and the certification is to be by the Accountant in Bankruptcy, Depute Accountant in Bankruptcy or any other person authorised by the Accountant in Bankruptcy to certify the notice of the determination on behalf of the Accountant in Bankruptcy.

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(1) This regulation re-enacts, with modifications, regulation 7 of the Bankruptcy (Scotland) Regulations 2014 (S.S.I. 2014/225) ("the 2014 Regulations") as amended by S.S.I. 2015/80.

(7) A certified notice containing an electronic signature, in a form to be agreed between AiB and the Keeper, of a determination referred to in paragraph (6) may be sent by AiB to the Keeper electronically<sup>(2)</sup>.

**“Minimal Asset Process” debtors to whom section 2(2) of Act applies: prescribed payments**

**13.**—(1) The payments specified in paragraph (2) are prescribed for the purposes of section 2(2)(a)(ii) of the Act (criteria for sequestration where debtor has minimal assets).

(2) Where the debtor has no other income (than from any of these payments) at the date of making his or her debtor application—

- (a) universal credit under Part 1 of the Welfare Reform Act 2012<sup>(3)</sup>;
- (b) another income-related benefit (as defined in section 191 of the Social Security Administration Act 1992<sup>(4)</sup>);
- (c) an income-based jobseeker’s allowance, as defined by section 1(4) of the Jobseekers Act 1995<sup>(5)</sup>;
- (d) state pension credit under the State Pension Credit Act 2002<sup>(6)</sup>;
- (e) child tax credit under the Tax Credits Act 2002<sup>(7)</sup>; or
- (f) an income-related allowance under Part 1 of the Welfare Reform Act 2007<sup>(8)</sup> (employment and support).

**“Minimal Asset Process” debtors to whom section 2(2) of Act applies: total assets**

**14.** The amount of £2,000 is prescribed for the purposes of paragraph 2(5)(a) of schedule 1 of the Act (total value of debtor’s assets after date of debtor application for AiB duty to consider whether paragraph 1 of that schedule should cease to have effect).

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(2) This regulation re-enacts, with modifications, regulation 5 of the 2014 Regulations.

(3) 2012 c.5.

(4) 1992 c.5. This definition, and the relevant provisions are repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c.5) subject to saving and transitional provisions.

(5) 1995 c.18, repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c.5), subject to saving and transitional provisions.

(6) 2002 c.16.

(7) 2002 c.21.

(8) 2007 c.5.