
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

INSOLVENCY

BANKRUPTCY

DEBT

The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023

Made - - - - 2023

Coming into force - - 6th February 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(4) and 7 of the Debt Arrangement and Attachment (Scotland) Act 2002(a), sections 2(5) and 205(1) of the Bankruptcy (Scotland) Act 2016(b) and all other powers enabling them to do so.

A draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament in accordance with section 225(4) of the Bankruptcy (Scotland) Act 2016(c).

Citation and commencement

1. These Regulations may be cited as the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 6 February 2023.

Amendment of the Bankruptcy (Scotland) Act 2016

2. In section 2(2)(b)(i) of the Bankruptcy (Scotland) Act 2016 (sequestration of estate of living debtor) for “£1,500 or such other” substitute “such”.

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- (a) 2002 asp 17 (“the 2002 Act”). Section 5(4) of the 2002 Act was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (“the 2007 Act”), section 212. Section 7 was amended by the 2007 Act, section 212 and by the Bankruptcy and Debt Advice (Scotland) Act 2014 asp 11, sections 3 and 53. Section 9(1) of the 2002 Act contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.
- (b) 2016 asp 21 (“the 2016 Act”). Section 228(1) of the 2016 Act contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.
- (c) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

Amendment of the Debt Arrangement Scheme (Scotland) Regulations 2011

3.—(1) The Debt Arrangement Scheme (Scotland) Regulations 2011(a) are amended as follows.

(2) In regulation 37 (grounds for variation)—

(a) in paragraph (1)(h)(b)—

(i) omit “specified in paragraph (3)”,

(ii) after “more” insert “, and it is envisaged the disposable income will be reduced for the period of deferment”, and

(b) omit paragraph (3).

(3) In Form 4(c) of schedule 1 (application for variation of a debt payment programme) for section 3h (grounds for variation) substitute section 3h set out in the schedule of these Regulations.

Amendment of the Bankruptcy Fees (Scotland) Regulations 2018

4.—(1) The Bankruptcy Fees (Scotland) Regulations 2018(d) are amended as follows.

(2) After regulation 7A(e) (exemption from fees for debtors in receipt of certain benefits), insert—

“Exemption from bankruptcy application fees for debtors assessed as having no surplus income

7B. Despite item 22 in Part 2 of the table of fees, no fee is payable to AiB under that item for the determination of a debtor application in relation to a debtor who, at the date of making the application, is assessed by the common financial tool(f) as having no surplus income.”.

(3) In Part 2 of the schedule (fees for other functions of the Accountant in Bankruptcy)—

(a) in column 2 of item 1(b) for “£300” substitute “£750”,

(b) in column 3 of item 1(b) for “£200” substitute “£300”,

(c) for item 22 substitute—

“22. For considering determination of a debtor application in relation to a debtor to whom section 2(2) of the Act does not apply £150”.

(4) Paragraphs (2) and (3) have no effect in relation to sequestrations as regards which the petition was presented or the debtor application was made before 6 February 2023.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House

Edinburgh

Date

(a) S.S.I. 2011/141.

(b) Paragraph (1)(h) was amended by S.S.I. 2013/225, S.S.I. 2014/294 and S.S.I. 2018/297.

(c) Form 4 was relevantly amended by S.S.I. 2018/297.

(d) S.S.I. 2018/127.

(e) Regulation 7A was inserted by S.S.I. 2021/148, regulation 9.

(f) The “common financial tool” is defined in section 89 of the 2016 Act (see S.S.I. 2016/397).

SCHEDULE

Regulation 3(3)

Amendment to Form 4 (application for variation of a debt payment programme)

- h The debtor, or in the case of a joint DPP the debtors, wishes to defer payment for a period not exceeding 6 months, with the period of the DPP to be extended accordingly, as the debtor's disposable income has reduced by 50% or more and it is envisaged the disposable income will be reduced for the period of deferment. Yes No

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”), the Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) and the Bankruptcy Fees (Scotland) Regulations 2018 (“the Bankruptcy Fees Regulations”).

Regulation 2 amends section 2(2) of the 2016 Act to remove the minimum debt threshold of £1,500 required for sequestration of an estate to be carried out by debtor application (known as the “minimal asset process”).

The DAS Regulations provide for a scheme for the repayment of debts in Scotland (“the Debt Arrangement Scheme”). They provide for the procedure and forms in respect of a repayment arrangement under the scheme, which is described as a debt payment programme (“DPP”). Regulation 3(2) extends the circumstances under which a DPP may be varied. Regulation 3(3) updates Form 4 (application for variation of a debt payment programme) of the DAS Regulations.

Regulation 4(2) inserts a new regulation 7B in the Bankruptcy Fees Regulations which provides an exemption from debtor application fees for debtors assessed as having no surplus income. Regulation 4(3) amends the table of fees in the schedule of the Bankruptcy Fees Regulations. The fee payable for administration of a petition following award of sequestration where the Accountant in Bankruptcy is the trustee is £750 (replacing the fee of £300). The fee payable in respect of a debtor application in relation to a debtor to whom the minimal asset process under section 2(2) of the Act applies is removed. Regulation 4(4) provides a saving for petitions and applications for sequestration lodged before 6 February 2023.

A Business and Regulatory Impact Assessment has been prepared and is available online at www.legislation.gov.uk.

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