

EXECUTIVE NOTE TO
THE BANKRUPTCY FEES (SCOTLAND) AMENDMENT (NO 2) REGULATIONS
2008
SSI/2008/79

The above instrument will be made in exercise of the powers conferred by Section 69A, 72 and 73(1) of the Bankruptcy (Scotland) Act 1985 (the 1985 Act). The instrument is subject to negative procedure.

Policy Objectives

This instrument amends the Bankruptcy Fees (Scotland) Regulations 1993⁽¹⁾, which came into force on 1 April 1993 and introduces new fees to be levied by the Accountant in Bankruptcy for new functions which commence from 1 April 2008.

Bankruptcy Fees

The Bankruptcy Fees (Scotland) Regulations stipulate the charges levied by the Accountant in Bankruptcy (“AiB”) in respect of her statutory functions as described in the Bankruptcy (Scotland) Act 1985, as amended. The Table of Fees is divided into 2 parts. Part 1 lists the fees payable for the functions of the Accountant in Bankruptcy in respect of the functions carried out as interim and/or permanent trustee in a bankruptcy. The Bankruptcy Fees (Scotland) Amendment (No 2) Regulations 2008 amends Part 1 to allow the fees to be payable to the AiB under her new role as Trustee. Part 2 lists the fees payable for all other statutory functions of the Accountant. The Bankruptcy Fees (Scotland) Amendment (No 2) Regulations 2008 introduces the new fees to Part 2.

The bankruptcy fees are paid from ingathered funds in the debtor’s estate. These funds may be from contributions from the debtor or assets realised by the Trustee. For cases where the Accountant in Bankruptcy is appointed as Trustee the fees are met from the public purse as part of the overall AiB budget from Justice Directorate when the realisation of the debtor’s estate results in insufficient funds. Where the Accountant is not appointed as Trustee the fees stated in Part 2 of the Schedule are paid to the AiB by the Trustee from the debtor’s estate even where there is no realisation of assets or contributions from the debtor.

Purpose of the reforms in the above instrument

The purpose of the Bankruptcy Fees (Scotland) Amendment (No 2) Regulations 2008 is to:

- introduce six new fees to be levied by AiB in respect of her new functions which will be introduced by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (2007 Act), and
- amend The Bankruptcy Fees (Scotland) Regulations 1993, as amended to take into consideration the introduction of the new function of “Trustee”, which will commence from 1 April 2008.

⁽¹⁾ S.I. 1993/486, as amended by S.I. 1999/752 and S.I. 2007/220.

The new fees are a:

- £100 debtor application fee;
- £200 Protected Trust Deeds (PTDs) supervision fee;
- £200 Bankruptcy Restriction Order (BRO) administration fee;
- £150 Bankruptcy Restriction Undertaking (BRU) administration fee;
- £19 new trustee registration fee;
- £200 replacement trustee fee.

The fee rates have been set to meet the AiB administration costs of undertaking the new functions, including any court fees that must be paid as part of that duty. The new fees will only apply in respect of petitions or applications for sequestration lodged or trust deeds granted on or after 1st April 2008.

Consultation

The consultation on the debtor's Low Income Low Asset (LILA) scheme proposed an application fee for the administration of the scheme. This was supported by the respondents to the consultation.

There has also been extensive engagement with the key stakeholders on the reforms in the 2007 Act, including Money Advice Scotland, Citizens Advice Scotland, and the Institute of Chartered Accountants of Scotland. This has included meetings, seminars, surveys and conferences. The general consensus has been that where the Accountant is to undertake a new function, a fee should be levied to reduce the potential burden on the public purse.

Financial Effect

The Regulations introduce new fees which can be levied by the Accountant in Bankruptcy.

When the Accountant in Bankruptcy is appointed Trustee in a bankruptcy and the estate does not hold sufficient funds the fees will continue to be paid by the public purse. Where the estate is sufficient to make a payment to creditors the new fees will be recovered which will affect the amount of any dividend to creditors.

An Insolvency Practitioner acting as Trustee in a bankruptcy or trust deed may recover any fee paid to the Accountant in Bankruptcy from the funds gathered through the administration of the bankruptcy or trust deed. If the estate does not hold sufficient funds the fee will be paid from the trustee's own funds. Where the estate is sufficient to make a payment to creditors, the payment of the new fee will reduce the amount of any dividend to creditors.

A Regulatory Impact Assessment has not been prepared.