
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 82

The Bankruptcy (Scotland) Regulations 2008

Citation and commencement

1. These Regulations may be cited as the Bankruptcy (Scotland) Regulations 2008 and come into force on 1st April 2008.

Interpretation

2. In these Regulations:

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

“the 1985 Regulations” means the Bankruptcy (Scotland) Regulations 1985(1); and

“the 1907 Act” means the Limited Partnership Act 1907(2).

Forms

3. The forms set out in the Schedule to these Regulations are the forms referred to in these Regulations, failing which they are the forms prescribed for the purposes of the provisions of the 1985 Act referred to therein.

Claims in foreign currency

4. A creditor may state the amount of that creditor’s claim in a foreign currency for the purposes of section 22(6) or that section as applied by section 48(7) of the 1985 Act, where—

(a) the claim is constituted by decree or other order made by a court ordering the debtor to pay to the creditor a sum expressed in a foreign currency; or, where it is not so constituted,

(b) the claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the debtor to the creditor in a foreign currency(3).

Conversion of foreign currency claims

5. For the purposes of section 23(1)(a) and 49(3) of the 1985 Act, the manner of conversion into Sterling of the amount of a claim stated in foreign currency shall be at the rate of exchange for that currency at the mean of the buying and selling spot rates prevailing at the close of business on the date of sequestration in the London market as published in any national newspaper(4).

(1) S.I.1985/1925, as amended by S.I. 1986/1914, 1993/439 and 2003/2109.

(2) 1907 c. 24.

(3) This regulation is a re-enactment of regulation 6 of the 1985 Regulations.

(4) This regulation is a re-enactment of regulation 7 of the 1985 Regulations.

Interest on claims in sequestration

6. The prescribed rate of interest for the purposes of section 51(7) of the 1985 Act (interest on preferred debts and ordinary debts between the date of sequestration and the date of payment of the debt) is 8 *per centum per annum*(5).

Premium of bond of caution

7. Any premium (or a proportionate part thereof) of any bond of caution or other security required to be given by an insolvency practitioner in respect of that insolvency practitioner's actings as interim trustee or trustee in any sequestration in which the insolvency practitioner is elected or appointed may be taken into account as part of that insolvency practitioner's outlays in that sequestration(6).

Definition of "associate"

8.—(1) Section 74 of the 1985 Act (meaning of "associate") shall be amended or modified in accordance with the following paragraphs.

(2) In subsection (3) for "and of the husband or wife or a relative of any individual with whom he is in partnership;", substitute "and of any person who is an associate of any person with whom he is in partnership;".

(3) After subsection (5), insert the following subsections:—

“(5A) A company is an associate of another company—

- (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other; or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(5B) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(5C) For the purposes of this section a person shall be taken to have control of a company if—

- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it,

and where two or more persons together satisfy either of the above conditions, they shall be taken to have control of the company.”.

(4) Subsection (6) shall apply subject to the modification that, "In subsection (5) above," there shall be substituted "In subsections (5), (5A), (5B), and (5C) above,"(7).

Application of the 1985 Act to limited partnerships

9.—(1) The application of the 1985 Act to the sequestration of the estate of a limited partnership shall be subject to the modifications specified in this regulation.

(5) This regulation re-enacts regulation 8 of the 1985 Regulations, as amended by S.I. 1993/439, regulation 4.

(6) This regulation re-enacts, with modifications, regulation 10 of the 1985 Regulations.

(7) This regulation re-enacts regulation 11 of the 1985 Regulations.

(2) Any reference in the 1985 Act or in legislation made under that Act (unless the context suggests otherwise) to a partnership (other than in section 6(1)) or to a firm shall be construed as including a reference to a limited partnership.

(3) In the application of section 9 of the 1985 Act to limited partnerships—

- (a) the Accountant in Bankruptcy shall have jurisdiction if a limited partnership is registered in Scotland and has a place of business in Scotland; and
- (b) the sheriff shall have jurisdiction if a limited partnership is registered in Scotland and has a place of business within the sheriff's sheriffdom.

(4) Without prejudice to the provisions of sections 14(1), 15(5) and 17(8) of the 1985 Act, the sheriff clerk shall send a copy of every court order mentioned in those sections to the Registrar of Limited Partnerships in Scotland⁽⁸⁾.

(5) In the case of a debtor application by a limited partnership, the Accountant in Bankruptcy shall send a copy of the determination to the Registrar of Limited Partnerships in Scotland.

Preference for remuneration of employees, etc.

10. The amount which is prescribed for the purposes of paragraphs 5(1) and 6 of Schedule 3 to the 1985 Act (the maximum amount which can 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⁽⁹⁾) shall be £800⁽¹⁰⁾.

Notice of sequestration in Edinburgh Gazette by trustee

11. The information prescribed for the purposes of section 15(6) of the 1985 Act (obligation of trustee to publish notice of award of sequestration in *Edinburgh Gazette*), shall be:

- (a) the name, designation and address of the debtor, including, if the debtor trades under a different name, the debtor's trading name and address;
- (b) the name of the court which granted the award of sequestration (or, where applicable, that the award was made by the Accountant in Bankruptcy on a debtor application);
- (c) the date of sequestration; and
- (d) the name, designation and office address of the trustee who has been appointed to act on the sequestrated estate of the debtor⁽¹¹⁾.

Debt Advice and Information Pack

12.—(1) Subject to paragraph (2) the time prescribed for the purposes of section 5(2D) of the 1985 Act⁽¹²⁾ 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) The requirement to provide the debtor with a debt advice and information package in section 5(2D) of the 1985 Act does not apply where it is averred that the address of the debtor is not known.

Apparent Insolvency/Creditor Debt Threshold

13. The sum which is prescribed for the purposes of section 7(1)(d) of the 1985 Act is £1500.

⁽⁸⁾ This regulation re-enacts, with modifications, regulation 12 of the 1985 Regulations.

⁽⁹⁾ 1985 c. 17.

⁽¹⁰⁾ This regulation re-enacts regulation 14 of the 1985 Regulations, as amended by S.I. 1986/1914, regulation 3.

⁽¹¹⁾ This regulation re-enacts, with modifications, regulation 16 of the 1985 Regulations, as inserted by S.I. 1993/439.

⁽¹²⁾ Section 5(2D) of the 1985 Act was inserted by the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#), section 26.

Debtor Applications

14.—(1) A debtor application(13) (including a low income/low asset application) as defined in section 73 of the 1985 Act shall be made to the Accountant in Bankruptcy—

- (a) in the case of an application by a living debtor without concurrence of a qualified creditor or creditors, in the form of Form 9;
- (b) in the case of an application by a living debtor with concurrence of a qualified creditor or qualified creditors in the form of Form 10;
- (c) in the case of an application by an entity referred to in section 6(1) of the 1985 Act in the form of Form 11; and

shall be accompanied in terms of section 5(6A) of the 1985 Act by a statement of assets and liabilities in the form of Form 12.

(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 the form of Form 13.

(3) In the case of a debtor application, if the Accountant in Bankruptcy considers that—

- (a) the application has not been fully completed;
- (b) there is a fee outstanding in respect of the application; or
- (c) an award of sequestration may not be appropriate in the circumstances of the case,

the Accountant in Bankruptcy shall advise the debtor in writing of which of the circumstances (a), (b) or (c) applies and require the debtor within 21 days (or such longer period as the Accountant in Bankruptcy may specify) to provide the outstanding fee or supply further information as specified by the Accountant in Bankruptcy.

(4) If after the expiry of the 21 days—

- (a) the application has not been fully completed;
- (b) payment of any outstanding fee in respect of the application has not been received by the Accountant in Bankruptcy; or
- (c) the Accountant in Bankruptcy is otherwise not satisfied that an award of sequestration is appropriate in the circumstances of the case,

the Accountant in Bankruptcy may refuse to award sequestration.

(5) The Accountant in Bankruptcy or the Depute Accountant in Bankruptcy shall daily sign a Schedule in the form of Form 14 listing those debtors whose estates have been sequestrated that day and shall enter the Schedule into the register of insolvencies.

(6) The Accountant in Bankruptcy shall notify in writing debtors in respect of whom an award of sequestration has been made forthwith after the award of sequestration.

(7) Where the Accountant in Bankruptcy refuses to award sequestration, the Accountant in Bankruptcy or Depute Accountant in Bankruptcy must complete and sign a Form 15 in respect of the debtor and forthwith send a copy to the applicant, or applicants, in the debtor application.

(8) Where the Accountant in Bankruptcy awards sequestration the certified notice of the determination to be sent by the Accountant in Bankruptcy to the Keeper of the Registers of Scotland for recording in terms of section 14(1A)(14) of the 1985 Act shall be in the form of Form 16 and the certification shall be by the Accountant in Bankruptcy, the Depute Accountant in Bankruptcy or any

(13) The definition of “debtor application” in section 73 of the 1985 Act was inserted by paragraph 60(2)(b) of the Schedule 1 to the 2007 Act.

(14) Section 14(1A) of the 1985 Act was inserted by paragraph 12(3) of the Schedule 1 to the 2007 Act.

other person authorised by the Accountant in Bankruptcy to certify the notice of the determination on behalf of the Accountant in Bankruptcy.

(9) A certified notice containing an electronic signature, in a form to be agreed between the Accountant in Bankruptcy and the Keeper of Registers of Scotland, of a determination referred to in paragraph (8) may be sent by the Accountant in Bankruptcy to the Keeper of the Registers of Scotland electronically.

Debtor applications/low income, low assets

15.—(1) In the case of debtor applications, on the basis that the low income/low asset conditions set out in section 5(2B)(c)(ia) of the 1985 Act may be met, the debtor must complete and return to the Accountant in Bankruptcy, within 21 days of being required by the Accountant in Bankruptcy in writing to complete it, a statutory declaration in the form of Form 17.

(2) In the event that a statutory declaration is not completed and returned by the debtor as required under paragraph (1), the Accountant in Bankruptcy, unless satisfied that the debtor is apparently insolvent in terms of section 7 of the 1985 Act, shall refuse to grant the application.

(3) In the case of an award of sequestration on the basis of an application fulfilling the conditions set out in section 5(2B)(c)(ia) of the 1985 Act, the notice published by the trustee in the Edinburgh Gazette in terms of section 15(6) of the 1985 Act, shall include a statement that—

- (a) the debtor meets the conditions set out in section 5(2B)(c)(ia) of the 1985 Act; and
- (b) that no dividend is expected and therefore creditors are not invited to submit claims in anticipation of a dividend, although the Accountant in Bankruptcy shall accept notification of sums outstanding to any creditor or of any other information relevant to the sequestration which a creditor may wish to draw to the attention of the Accountant in Bankruptcy.

Report where no statutory meeting called

16. A report to the Accountant in Bankruptcy in terms of section 21B(1) shall be in the form of Form 18.

Trustee Resignation Application

17. An application under section 28(1) of the 1985 Act by a trustee for authority to resign shall be in the form of Form 19.

Income Payment Agreements

18. An income payment agreement made under section 32(4B) of the 1985 Act shall be in the form of Form 20.

Abandonment of Heritable Property by Trustee

19.—(1) Where a trustee (other than the Accountant in Bankruptcy) has abandoned to the debtor any heritable property, notice of abandonment for the purposes of section 32(9A)(15) of the 1985 Act shall be in the form of Form 21.

(2) Where a trustee, being the Accountant in Bankruptcy, abandons any heritable property in the circumstances referred to in paragraph (1) above, notice of abandonment shall be in the form of Form 22.

(15) Section 32(9A) of the 1985 Act was inserted by section 19 of the 2007 Act.

(3) Notice of abandonment referred to in paragraph (2) shall be by the Accountant in Bankruptcy, the Depute Accountant in Bankruptcy or any other person authorised by the Accountant in Bankruptcy to certify the copy of the determination on behalf of the Accountant in Bankruptcy.

(4) A certified copy of a notice referred to in paragraph (2), containing an electronic signature, in a form to be agreed between the Accountant in Bankruptcy and the Keeper of Registers of Scotland, may be sent electronically by the Accountant in Bankruptcy to the Keeper of the Registers of Scotland.

Debtor's requirement to give account of state of affairs

20. A debtor's account of that debtor's current state of affairs for the purposes of section 43A(2)(16) of the 1985 Act shall be in the form of Form 23.

Revocations

21. The 1985 Regulations are hereby revoked.

Saving Provisions

22. Notwithstanding the revocation of the 1985 Regulations, regulations 2, 5, 9, 10, 13, 15, 16, 17 and 18 shall remain in force with respect to any sequestration in respect of which the petition is presented before or, in the case of regulation 18, trust deeds granted prior to the coming into force of these Regulations.

St Andrew's House,
Edinburgh
4th March 2008

FERGUS EWING
Authorised to sign by the Scottish Ministers