
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 226

The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014

PART 3

Specific applications

Application for direction by trustee

8.—(1) An application to the Accountant under section 3A(2) of the Act (application for direction)⁽¹⁾ must be made in writing in Form 2.

(2) Where an application is made under that subsection, the Accountant must before the expiry of the period of 28 days beginning with the day on which the application is made—

- (a) give a direction; or
- (b) refer the matter to the sheriff under section 3A(3) of the Act.

Recall of sequestration by Accountant in Bankruptcy

9.—(1) Where the statement of the debtor's affairs is not submitted in accordance with section 17B(3)(a) of the Act (recall where the only ground is that the debtor has paid or is able to pay debts in full)⁽²⁾, the application is not to be considered by the Accountant until it is submitted.

(2) Where paragraph (1) applies the Accountant may make inquiries under regulation 6.

(3) The Accountant must send to the persons listed in section 17A(2) of the Act a copy of the Accountant's decision under section 17D(1) or 17E(6) of the Act.

(4) The Accountant must send with any notification under section 17E(2) of the Act (recall where the only ground is that debtor has paid or is able to pay the debtor's debts in full: Accountant acting as trustee)⁽³⁾—

- (a) a statement of the debtor's affairs; and
- (b) a copy of the application for recall,

and advise the recipients of the period for making representations under section 17E(5)(a) of the Act.

(5) Where the Accountant gives notification under section 17E(2) of the Act, the Accountant must also notify any other interested person, informing the recipient that the person has the right to make representations to the Accountant in relation to the application before the expiry of the period of 21 days beginning with the day on which the notice is given.

(6) Where recall is under consideration (including on a review application), and sequestration is recalled by the Accountant, the Accountant must at that time consider whether to annul under

(1) Section 3A is inserted by section 25(2) of the 2014 Act.

(2) Sections 17A, 17B and 17E are inserted by section 27 of the 2014 Act.

(3) Section 17A is inserted by section 27 of the 2014 Act.

section 56J(4) of the Act(4) any bankruptcy restrictions order (or interim order) in effect in relation to the debtor.

(7) Where an original review decision is amended or revoked on review, the Accountant must send a certified copy of the revised decision to the Keeper of the Register of Inhibitions for recording in that register.

Appointment of replacement trustee

10.—(1) A report to the Accountant under section 25(2)(a) of the Act(5) of a statutory meeting appointing a replacement trustee must be made in writing in Form 4.

(2) If the Accountant declares an elected person to be trustee under section 25(5) of the Act, the Accountant must send a copy of the decision to the original trustee and the replacement trustee.

(3) Where the Accountant gives an opportunity to make representations under section 25A(2) of the Act (on receiving an objection), the Accountant must—

- (a) notify the original and replacement trustees, the objector and any other interested person; and
- (b) advise those persons that written submissions under section 25A(2) must be made before the expiry of the period of 14 days beginning with the date on which the notification was given.

(4) The Accountant must notify the original and replacement trustees, the objector and any other interested person of any declaration or order under section 25A(3) of the Act.

Replacement trustee acting in more than one sequestration

11. A determination or appointment under section 28A of the Act(6) (replacement trustee acting in more than one sequestration) must be made by the Accountant before the expiry of the period of 14 days following the expiry of the period under section 28A(10) of the Act.

Removal of trustee and trustee not acting

12.—(1) An order under section 29(1)(b) of the Act (removal of trustee from office by the Accountant in Bankruptcy)(7) must be made in writing in Form 5.

(2) Where the trustee has the opportunity to make representations under section 29(2)(c) of the Act(8), the Accountant must allow the period of 21 days beginning with the date on which the copy application was sent under section 29(2)(a) of the Act for those representations.

(3) The Accountant must before the expiry of the period of 14 days beginning after the expiry of that period of 21 days—

- (a) decide whether to remove or refuse to remove the trustee (or make any other order) under section 29(1)(b) or (3)(9) of the Act; or
- (b) refer the matter to the sheriff under section 29(6I)(a) of the Act(10).

(4) Before making any declaration or order under section 29(6) of the Act(11), the Accountant must give the trustee an opportunity to make representations.

(4) Section 56J(4) is inserted by section 33(8) of the 2014 Act.

(5) Sections 25, 25A and 25B are substituted by section 28(1) of the 2014 Act.

(6) Section 28A is substituted by section 29 of the 2014 Act.

(7) Section 29(1)(b) is amended by section 30(a) of the 2014 Act.

(8) Section 29(2) is substituted by section 30(c) of the 2014 Act.

(9) Section 29(2) and (3) are substituted by section 30(c) and (d) of the 2014 Act.

(10) Section 29(6I) is inserted by section 30(g) of the 2014 Act.

(11) Section 29(6) is substituted by section 30(g) of the 2014 Act.

(5) In the case of an application under section 29(6A)(a) of the Act, the Accountant must before the expiry of the period of 14 days beginning after the expiry of the period for representations under regulation 5(10)—

- (a) decide whether to make any declaration (or any other order) under section 29(6); or
- (b) refer the matter to the sheriff under section 29(6I)(a) of the Act.

(6) The Accountant must notify the trustee, the debtor, commissioners or any creditor of any order or decision under section 29(1)(b), (3) or (6) of the Act.

(7) Where a review application is made under section 29, the Accountant must notify any commissioners required to call a meeting under section 29(5) or (6C) of the Act(12).

(8) The requirement to hold that meeting under section 29(5) or (6D)(13) within 28 days—

- (a) is extended until the date of the review decision (or any appeal from that decision); and
- (b) on that decision (or any appeal from that decision) the period allowed for holding the meeting is the greater of—
 - (i) the unexpired days before the period specified in section 29(5) or (6D) of the Act would have elapsed (ignoring its extension) after the date on which the review application was made; or
 - (ii) the period of 28 days.

(9) Where a review decision is made under section 29 of the Act, the Accountant must notify any commissioners required to call a meeting under section 29(5) or (6C) of the Act.

Contractual powers of trustee

13.—(1) Where an application is made under section 42(2A)(b) of the Act (contractual powers of trustee)(14), the Accountant must before the expiry of the period of 14 days beginning with the day on which the application is made—

- (a) decide whether to extend the 28 day period for the trustee to adopt or refuse to adopt a contract under section 42(2) of the Act; or
- (b) refer the matter to the sheriff under section 42(2E) of the Act.

(2) The Accountant must notify all interested persons—

- (a) of any decision of the Accountant on such an application; and
- (b) of any direction of the sheriff within 7 days of receipt of that direction.

(3) For the avoidance of doubt, the time limit in paragraph (1) does not apply to any review application.

Bankruptcy restrictions orders: proposal to make an order

14.—(1) The Accountant must allow the period of 14 days beginning with the day on which notice is given under section 56A(3) of the Act (proposal to make bankruptcy restrictions order)(15) for representations by the debtor.

(2) Those representations must be made in writing by any means by which an application may be made (see regulation 3(1)).

(3) Notice under section 56A(3) informing the debtor under section 56A(4) of the Act must also inform the debtor—

(12) Section 29(5) and (6C) are respectively amended and inserted by section 30(f) and (g) of the 2014 Act.

(13) Section 29(6D) is substituted by section 30(g) of the 2014 Act.

(14) Section 42(2A) and (2E) are inserted by section 32 of the 2014 Act.

(15) Section 56A is substituted by section 33(1) of the 2014 Act.

- (a) of the reasons for proposing to make the order;
 - (b) of any grounds for proposing an interim bankruptcy restrictions order;
 - (c) that the representations must be made—
 - (i) in writing (including by email or using the computer system); and
 - (ii) before the expiry of 14 days beginning with the date on which the notice was given (or in the case of any proposed interim bankruptcy restrictions order, before the expiry of the period of 2 days beginning with the date on which the notice was given).
- (4) The Accountant must make or decide not to make the bankruptcy restrictions order before the expiry of 21 days beginning with the date on which the notice was given.

Bankruptcy restrictions orders: annulment or variation

15.—(1) Where an application is made to the Accountant under section 56E(3) of the Act (to annul or vary a bankruptcy restrictions order)(**16**), the Accountant must notify all interested persons that those persons have the right to make representations to the Accountant in relation to the application before the expiry of the period of 21 days beginning with the day on which the application is made.

(2) Those representations must be made in writing by any means by which an application may be made (see regulation 3(1)).

(3) Where following recall of sequestration the Accountant refuses under section 56J(4)(**17**) of the Act to annul a bankruptcy restrictions order, the Accountant must inform the debtor that the debtor has the right to apply to the Accountant for review of that decision before the expiry of the period of 14 days beginning with the day on which the award of sequestration was recalled.

Conversion of protected trust deed into bankruptcy

16.—(1) An application to the Accountant under section 59A(1) of the Act (conversion of protected trust deed into sequestration)(**18**) must be made in writing in Form 6.

(2) An award under section 59C(1) of the Act (power of Accountant in Bankruptcy: conversion of protected trust deed into sequestration) must be made in writing in Form 7.

(3) Where the Accountant makes, or refuses to make, an order for conversion into sequestration, the Accountant must inform the member State liquidator, the debtor, the trustee and any other person who has been served with a copy of the application and the affidavit.

Power to cure defects

17. Where the Accountant makes, or refuses to make, under section 63A of the Act (curing defects in procedure)(**19**) a corrective order or to waive a time limit, the Accountant must notify all interested persons.

Debts depending on contingency

18. Where the Accountant puts a value on a debt under paragraph 3(2) of Schedule 1 to the Act (debts depending on a contingency)(**20**), the Accountant must notify the creditor and all other interested persons.

(16) Section 56E was inserted by section 2(1) of the 2007 Act and amended by section 33(6)(b) of the 2014 Act.

(17) Section 56J was inserted by section 2(1) of the 2007 Act and amended by section 33(8) of the 2014 Act.

(18) Sections 59A, 59B and 59C were inserted by the Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109) and amended by section 34 of the 2014 Act.

(19) Section 63A is inserted by section 35(3) of the 2014 Act.

(20) Paragraph 3 of Schedule 1 is amended by section 37 of the 2014 Act.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
