
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 295

**The Bankruptcy (Applications and
Decisions) (Scotland) Regulations 2016**

PART 3

Specific applications

Recall of sequestration by Accountant in Bankruptcy

9.—(1) Where the statement of the debtor's affairs is not submitted in accordance with section 32(3)(a) of the Act (recall where the only ground is that the debtor has paid or is able to pay debts in full), the application is not to be considered by AiB until it is submitted.

(2) Where paragraph (1) applies AiB may make inquiries under regulation 7.

(3) AiB must send to the persons listed in section 31(2) of the Act a copy of AiB's decision under section 34(1) or 35(6) of the Act.

(4) AiB must send with any notification under section 35(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: AiB acting as trustee)—

- (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 35(5)(a) of the Act.

(5) Where AiB gives notification under section 35(2) of the Act, AiB must also notify any other interested person, informing the recipient that the person has the right to make representations to AiB in relation to the application within 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 AiB, AiB must at that time consider whether to revoke under section 161(4) of the Act any bankruptcy restrictions order (or interim order) in effect in relation to the debtor.

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

Application for direction by trustee

10.—(1) An application to AiB under section 52(2) of the Act (application for direction) must be made in writing in Form 2.

(2) Where an application is made under that subsection, AiB must before the expiry 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 52(3) of the Act.

Appointment of replacement trustee

11.—(1) A report to AiB under section 60(2)(a) of the Act of a statutory meeting appointing a replacement trustee must be made in writing in Form 4.

(2) If AiB declares an elected person to be trustee under section 60(5) of the Act, AiB must send a copy of the decision to the original trustee and the replacement trustee.

(3) Where AiB gives an opportunity to make representations under section 61(2) of the Act (on receiving an objection), AiB 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 61(2) must be made within 14 days beginning with the date on which the notification was given.

(4) AiB must notify the original and replacement trustees, the objector and any other interested person of any declaration or order under section 61(3) of the Act (and in the case of such an order must do so without delay).

Replacement trustee acting in more than one sequestration

12. A determination or appointment under section 66 of the Act (replacement of trustee acting in more than one sequestration) must be made by AiB within 14 days following the expiry of the period mentioned in section 66(10) of the Act.

Removal of trustee and trustee not acting

13.—(1) An order under section 70(1)(b) of the Act (removal of trustee from office by AiB) must be made in writing in Form 5.

(2) Where the trustee has the opportunity to make representations under section 70(4)(c) of the Act, AiB must allow 21 days beginning with the date on which the copy application was sent under section 70(4)(a) of the Act for those representations.

(3) AiB must within 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 70(1)(b) or (5) of the Act; or
- (b) refer the matter to the sheriff under section 71(7)(a) of the Act.

(4) Before making any declaration or order under section 72(1) of the Act, AiB must give the trustee an opportunity to make representations.

(5) In the case of an application under section 72(3)(a) of the Act, AiB must within 14 days beginning after the expiry of the period for representations under regulation 6(10)—

- (a) decide whether to make any declaration (or any other order) under section 72(1) of the Act; or
- (b) refer the matter to the sheriff under section 71(7)(a) of the Act.

(6) The Accountant must notify the trustee, the debtor, commissioners or any creditor of any order or decision under section 70(1)(b) or (5) or section 72(1) of the Act.

(7) Where a review application is made under sections 71 or 73, AiB must notify any commissioners required to call a meeting under sections 71(6) or 73(1) of the Act.

(8) The requirement to hold that meeting under sections 71(6) or 73(1) 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 sections 71(6) or 73(1) of the Act would have elapsed (ignoring its extension) after the date on which the review application was made; or
- (ii) 28 days.

(9) Where a review decision is made under sections 71 or 73 of the Act, AiB must notify any commissioners required to call a meeting under sections 71(6) or 73(1) of the Act.

Contractual powers of trustee

14.—(1) Where an application is made under section 110(4)(b) of the Act (to extend the 28 days for a trustee to adopt or refuse to adopt a contract), AiB must within 14 days beginning with the day on which the application is made—

- (a) decide whether to extend the 28 days; or
- (b) refer the matter to the sheriff under section 110(8) of the Act.

(2) AiB must notify all interested persons—

- (a) of any decision of AiB 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

15.—(1) AiB must allow 14 days beginning with the day on which notice is given under section 155(2) of the Act (proposal to make bankruptcy restrictions order) 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 4(1)).

(3) Notice under section 155(2) informing the debtor under section 155(3) of the Act must also inform the debtor—

- (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) within 14 days beginning with the date on which the notice was given (or in the case of any proposed interim bankruptcy restrictions order, within 2 days beginning with the date on which the notice was given).

(4) AiB must make or decide not to make the bankruptcy restrictions order within 21 days beginning with the date on which the notice was given.

Bankruptcy restrictions orders: revocation or variation

16.—(1) Where an application is made to AiB under section 159(3) of the Act (to revoke or vary a bankruptcy restrictions order), AiB must notify all interested persons that those persons have the right to make representations to AiB in relation to the application within 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 4(1)).

(3) Where following recall of sequestration AiB refuses under section 161(4) of the Act to revoke a bankruptcy restrictions order, AiB must inform the debtor that the debtor has the right to apply to AiB for review of that decision within 14 days beginning with the day on which the award of sequestration was recalled.

Conversion of protected trust deed into bankruptcy

17.—(1) An application to AiB under section 190(1) and (2) of the Act (conversion of protected trust deed into sequestration) must be made in writing in Form 6.

(2) An award under section 192(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 AiB makes, or refuses to make, an order for conversion into sequestration, AiB 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

18. Where AiB makes, or refuses to make, under section 212 of the Act (curing defects in procedure) a corrective order or to waive a time limit, AiB must notify all interested persons.

Debts depending on contingency

19. Where AiB puts a value on a debt under paragraph 3(3) of schedule 2 of the Act (debts depending on a contingency), AiB must notify the creditor and all other interested persons.