SCOTTISH STATUTORY INSTRUMENTS

2018 No. 127

INSOLVENCY
BANKRUPTCY
DEBT

The Bankruptcy Fees (Scotland) Regulations 2018

Made - - - -	*19th April 2018*
Laid before the Scottish Parliament - - - -	*20th April 2018*
Coming into force - -	*1st June 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 69A and 72(1A) of the Bankruptcy (Scotland) Act 1985 [M1], sections 205 and 225(2) of the Bankruptcy (Scotland) Act 2016 [M2], and all other powers enabling them to do so.

Marginal Citations

M1 1985 c.66 ("the 1985 Act"). The 1985 Act was repealed by the Bankruptcy (Scotland) Act 2016 (asp 21; "the 2016 Act"), schedule 9, Part 1; by virtue of section 234(3) of the 2016 Act the powers to make amendments under which these Regulations are made are not affected by that repeal in so far as they relate to the operation of the 1985 Act in relation to sequestrations which were applied or petitioned for, or trust deeds executed before, 30th November 2016. Section 73(1) of the 1985 Act contains a definition of "prescribed" relevant to the powers under which these Regulations are made. Section 69A was inserted by section 8 of the Bankruptcy (Scotland) Act 1993 (c.6) and amended by S.I. 1999/1820. Section 72(1A) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), **schedule 3**, paragraph 34(a). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

M2 2016 asp 21 ("the 2016 Act"). Section 228(2) of the 2016 Act contains a definition of "prescribed" relevant to the exercise of the powers under which these Regulations are made.

Citation and commencement

1.—(1) These Regulations may be cited as the Bankruptcy Fees (Scotland) Regulations 2018.

(2) They come into force on 1st June 2018.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"the Act" means the Bankruptcy (Scotland) Act 2016;

"Accountant in Bankruptcy (or "AiB") is to be construed in accordance with section 199 of the Act;

"bankruptcy restrictions order" has the meaning given by section 155(1) of the Act;

"debtor's contribution" has the meaning given by section 89(1) of the Act;

"expenses of realisation" means any outlays incurred by the trustee in realising the debtor's estate which in the course of normal business practice are deducted from the price payable to the trustee;

F1 …

"table of fees" means the Table of Fees in the schedule;

"statutory fee" means any fee payable under an enactment;

"the statutory meeting" has the meaning given by section 43 of the Act;

"trading expenses" means any outlays incurred by the trustee in the carrying on of any business of the debtor;

"trust deed", where granted before 1st April 1993, means a voluntary trust deed granted by or on behalf of a debtor, whereby the debtor's estate is conveyed to the trustee for the benefit of the creditors of that debtor generally and, where granted on or after that date, has the meaning given by section 228(1) of the Act; and

"trustee vote" is to be construed in accordance with section 49(1) and (2) of the Act.

Textual Amendments

F1 Words in reg. 2 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **5(2)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, 2); 2020 c. 1, Sch. 5 para. 1(1)

Fees and outlays as interim trustee or trustee

3. The fees payable to AiB in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration, which are specified in column 1 of Part 1 of the table of fees are the fees specified in relation to those functions in column 2 of the table of fees.

4. The outlays payable to AiB in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration are those outlays actually, necessarily and reasonably incurred in respect of the exercise of any of those functions and include, but are not limited to, outlays so incurred in respect of—

(a) the making of searches in any public register;

(b) the valuation of property;

(c) legal services and related expenses;

(d) estate agency services;

(e) the services of auctioneers and valuers;

(f) services related to taxation matters;

(g) travel and subsistence expenses; and

(h) any payment by AiB under section 201(4) of the Act to a person appointed to perform AiB's functions as interim trustee or trustee not met by the fee charged under item 2 of Part 1 of the table of fees.

5. Any fees and outlays payable to AiB in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration are due for payment from the sequestrated estate where—

(a) AiB has made a determination of its fees and outlays calculated in accordance with these Regulations, under and in accordance with, as appropriate, one of these provisions of the Act—

(i) section 64(3) (determination of fees and outlays where Accountant in Bankruptcy was original trustee and some other person becomes trustee);

(ii) section 136(1) and (2) (determination of fees and outlays at end of each accounting period where Accountant in Bankruptcy is trustee);

(iii) section 151(3) (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee); and

(b) the period within which an appeal against such a determination may be taken to the sheriff has expired or, if an appeal is so taken, that appeal has been determined, under, as appropriate, one of these provisions of the Act—

(i) section 64(8) and (9);

(ii) section 136(4) and (6);

(iii) section 151(7) and (8).

Other fees

6. The fees payable to AiB in respect of the exercise of that office's functions, other than as interim trustee or trustee in a sequestration, specified in column 1 of Part 2 of the table of fees are the fees specified in relation to those functions in column 2 of the table of fees.

7. A fee payable under regulation 6 is payable even although it is payable by or on behalf of AiB in the exercise of that office's functions as interim trustee or trustee in a sequestration.

[[F2]Exemption from bankruptcy application fees for debtors in receipt of certain benefits

7A. 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—

(a) in relation to a debtor who, at the date of making the application, is in receipt of one or more of the following payments—

(i) universal credit under Part 1 of the Welfare Reform Act 2012,

(ii) another income-related benefit within the meaning given by section 191 of the Social Security Administration Act 1992,

(iii) jobseeker's allowance under the Jobseekers Act 1995,

(iv) state pension credit under the State Pension Credit Act 2002,

(v) child tax credit under the Tax Credits Act 2002, or

(vi) employment and support allowance under Part 1 of the Welfare Reform Act 2007,

(b) in relation to a debtor who, at the date of making the application, is in receipt of working tax credit, provided that—

(i) child tax credit is being paid to the debtor, or otherwise following a claim for child tax credit made jointly by members of a couple (as defined in section 3(5A) of the Tax Credits Act 2002) which includes the debtor, or

(ii) there is a disability element or severe disability element (or both) to the tax credit received by the debtor,

and that the gross annual income taken into account for the calculation of the working tax credit is £18,000 or less, or

(c) in relation to a debtor who, within the period of 3 months prior to the date of making the application, received financial or other assistance under the Welfare Funds (Scotland) Act 2015.**]**

Textual Amendments

F2 Reg. 7A inserted (29.3.2021) by The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/148), regs. 1, **9(2)** (with reg. 3(d))

[F3Exemption 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 as having no surplus income.**]**

Textual Amendments

F3 Reg. 7B inserted (6.2.2023) by The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 (S.S.I. 2023/9), regs. 1, **4(2)** (with reg. 4(4))

Manner of payment

8. A fee payable to AiB for a function specified in Part 2 of the table of fees is due for payment—

(a) for item 2 (supervision of sequestration proceedings)—

(i) at the end of each 12 month period of supervision; or

(ii) if the trustee is discharged during a 12 month period, in advance of the grant of a certificate of discharge under section 148(5) of the Act;

(b) for item 8(c) (protected trust deed supervision)—

(i) at the end of each 12 month period of supervision; or

(ii) if the trustee is discharged during a 12 month period, in advance of the date of discharge of the trustee under section 186 of the Act;

(c) for item 12 (election of replacement trustee by trustee vote) on submission of the relevant report to AiB;

(d) on the application for these services being made to AiB for—

(i) item 14 (removal of trustee and trustee not acting);

(ii) item 15 (declaration of office of trustee as vacant);

(iii) item 16 (replacement of trustee acting in more than one sequestration);

(iv) item 17 (appointment or reappointment of trustee where newly identified estate);

(v) item 18 (application by trustee for a direction);

(vi) item 19 (curing defects in procedure);

(vii) item 21 (conversion of trust deed into sequestration);

(e) for item 22 (determination of debtor applications)—

(i) on the application being made to AiB; and

(ii) if paragraph 1 of schedule 1 of the Act ceases to apply to the debtor, on receiving a request from AiB for the fee due under item 22(b) taking account of the fee already paid under item 22(a);

(f) for any other such function, on performance by AiB of that function.

9. A fee payable to AiB in respect of a function specified in Part 2 of the table of fees by an interim trustee, trustee in a sequestration or trustee under a protected trust deed is payable by the trustee whether or not there are subsequently funds available for distribution from the debtor's estate to meet that fee.

Waiver of fees

10.—(1) The fees in Part 2 of the table of fees payable to AiB may not be waived by AiB in whole or in part, subject to paragraph (2).

(2) AiB may waive (in whole or in part) the fees due in accordance with—

(a) regulation 8(b)(ii) (protected trust deed final supervision period) if the debtor who granted the protected trust deed failed to meet the debtor's obligations for the purposes of section 184(2)(a) of the Act;

(b) regulation 8(e)(ii) (minimal asset process ceasing to apply), unless the debtor provided false or misleading information in the debtor application.

[[F4]10A. No fee is payable to AiB under these Regulations where AiB becomes the trustee in a protected trust deed by virtue of section 186A of the Act.**]**

Textual Amendments

F4 Reg. 10A inserted (1.7.2024) by The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 (S.S.I. 2024/198), regs. 1(1), **8(2)**

Repayment of fees - refusal of bankruptcy restrictions order

11.—(1) Where AiB or a sheriff does not grant an application for a bankruptcy restrictions order under section 155(1) of the Act, AiB or the sheriff may hold that in the circumstances of the case it was not reasonable to make the application.

(2) In that event, any fee charged by AiB under item 23 of Part 2 of the table of fees must be repaid.

Sequestrations and trust deeds before 1st June 2018

12. These Regulations have no effect in relation to—

(a) sequestrations as regards which the petition was presented or the debtor application was made before; or

(b) trust deeds executed before,

1st June 2018.

Revocations

13. The Bankruptcy Fees (Scotland) Regulations 2014 [M3] and regulation 4 of the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2015 [M4] are revoked (subject to regulation 12).

Marginal Citations

M3 S.S.I. 2014/227, as amended by S.S.I. 2015/80. S.S.I. 2014/227 was prospectively revoked by S.S.I. 2017/37, but that revocation did not take effect by virtue of S.S.I. 2017/97.

M4 S.S.I. 2015/80.

St Andrew's House,
Edinburgh

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulations 3 and 6

TABLE OF FEES - BANKRUPTCY

PART 1

Fees for Accountant in Bankruptcy as interim trustee or trustee in sequestration

Column 1 (Functions)	***Column 2 (Fee Payable)***	***Column 3 (Former Rates)***
1. In respect of the exercise by AiB of that office's functions as interim trustee in a sequestration where AiB is not appointed as trustee in that sequestration.	£300.00	£200.00
2. In respect of the exercise by AiB of that office's functions as interim trustee or trustee in a sequestration, other than in respect of—	£1,700.00	£1,100.00
(a) (a) the realisation of assets in the sequestrated estate;		
(b) (b) ingathering debtor's contributions; and		
(c) (c) payment of dividends to creditors.		
3. In respect of the exercise by AiB of that office's functions as trustee in a sequestration in relation to the realisation of assets in the sequestrated estate—		
(a) (a) in respect of the total price paid in a transaction by the purchaser of heritable property, including any interest paid thereon, but after the deduction of any sums paid to secured creditors in respect of their securities over that property—		
(i) (i) on the first £10,000 or fraction of that sum;	15% of that amount	*(No change)*
(ii) (ii) on the next £10,000 or fraction of that sum;	5% of that amount	*(No change)*
(iii) (iii) on all further sums;	2% of that amount	*(No change)*
(b) (b) in respect of the proceeds of the sale of moveable property, after the deduction of the expenses of sale and any sums paid to secured creditors in respect of their securities over that property—		
(i) (i) on the first £10,000 or fraction of that sum;	15% of that amount	*(No change)*
(ii) (ii) on the next £10,000 or fraction of that sum;	5% of that amount	*(No change)*

(iii) (iii) on all further sums;	2% of that amount	*(No change)*
4. In respect of the exercise by AiB of that office's functions as interim trustee or trustee in a sequestration in ingathering debtor's contributions.	25% of funds ingathered	*(No change)*
5. In respect of the exercise by AiB of that office's functions as trustee in relation to the payment of dividends to creditors—		
(a) (a) on the first £10,000 or fraction of that sum;	10% of that amount	*(No change)*
(b) (b) on the next £10,000 or fraction of that sum;	5% of that amount	*(No change)*
(c) (c) on all further sums.	1% of that amount	*(No change)*

PART 2

Fees for other functions of the Accountant in Bankruptcy

Column 1 (Functions)	***Column 2 (Fee Payable)***	***Column 3 (Fee Formerly Payable)***
1. For administration of—		
(a) (a) any petition by a creditor or trustee under a protected trust deed;	£150.00	£100.00
(b) (b) any such petition where following award of sequestration AiB is the trustee.	**[**[F5]£750**]**	**[**[F6]£300**]**
2. For supervising proceedings in sequestration—		
(a) (a) where commissioners have been elected;	(a) £100.00 per 12 month period of supervision beginning on the date of appointment of the trustee and ending on discharge of the trustee (or part of such period) for the first 12 month period (or part of such period); and	£70.00 per 12 month period of supervision.
	(b) thereafter £70.00 per 12 month period of	£50.00 per 12 month period of supervision.

	supervision throughout which commissioners are in post (or part of such period).	
(b) (b) where no commissioners have been elected;	£100.00 per 12 month period of supervision beginning on the date of appointment of the trustee and ending on discharge of the trustee (or part of such period).	£70.00 per 12 month period of supervision.
3. For considering and issuing a determination in an appeal against a determination of commissioners as to the outlays and remuneration payable to a trustee.	5% of the sum remaining on deduction from the sum of outlays and remuneration determined by AiB of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	*(No change)*
4. For issuing a determination fixing the outlays and remuneration payable to— (a) (a) an interim trustee; or (b) (b) a trustee.	17.5% of the sum remaining on deduction from the sum of outlays and remuneration determined of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	*(No change)*
5. For attendance at any meeting of creditors – fee per hour or part thereof, including travelling time.	£69.00	*(No change)*
6. For calling any meeting of creditors.	£36.00	*(No change)*
7. For attendance at any examination of the debtor – fee per hour or part thereof, including travelling time.	£69.00	*(No change)*
8. In respect of protected trust deeds—		
(a) (a) for publishing a notice in the register of insolvencies where—		
(i) (i) the notice is sent by the trustee using the electronic service provided by AiB;	£40.00	£35.00
(ii) (ii) the notice is sent by the trustee by any other method;	£100.00	£90.00

(b) (b) for registering a protected trust deed;	£40.00	£36.00
(c) (c) for supervision of a trustee under a protected trust deed.	**[**[F7]£120.00**]** per 12 month period of supervision beginning on the date of registration of the protected trust deed and ending on the discharge of the trustee (or part of such period).	*(No change)*
9. For auditing the accounts of a trustee under a protected trust deed and fixing the trustee's remuneration.	5% of the sum remaining on deduction from the sum of outlays and remuneration determined of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	*(No change)*
10. For lodging any unclaimed dividend in an appropriate bank or institution set aside for payment to a creditor or creditors, in respect of each creditor on consignation.	£26.00	*(No change)*
11. For uplifting any unclaimed dividend consigned in an appropriate bank or institution, in respect of each creditor.	£26.00	*(No change)*
12. For receiving a report of proceedings at the statutory meeting to elect a replacement trustee, other than following the death of a trustee acting in only one sequestration.	£50.00	*(No change)*
13. For considering appointment of a replacement trustee where the original trustee has resigned and no new trustee is elected by trustee vote.	£50.00	*(No change to fee, but fee now applicable to any consideration of appointment)*
14. For considering an order in relation to an application for removal of a trustee by commissioners or a person representing at least ¼ in value of the creditors.	£50.00	*(No change to fee, but fee now applicable to any consideration of order)*
15. For considering a declaration or any necessary order in relation to an application for declaration of the office of trustee as vacant by commissioners, a debtor or a creditor.	£50.00	*(No change to fee, but fee now applicable to any consideration of declaration or order)*
16. For considering making a determination or appointment on receipt of an application by a person with an interest for the replacement of a trustee acting in more than one sequestration.	£50.00	*(No change to fee, but fee now applicable to any consideration of determination or appointment)*

17. For considering appointment of a trustee where newly identified estate is discovered after the trustee's discharge, on receipt of an application by the trustee who was discharged.	£50.00	*(No change to fee, but fee now applicable to any consideration of appointment)*
18. For considering an application by a trustee for a direction on a particular matter arising in the sequestration.	£50.00	*(No change to fee, but fee now applicable to any application)*
19. For considering issuing an order curing defects in procedure on receipt of an application by any person having an interest.	£50.00	*(No change to fee, but fee now applicable to any consideration of issuing order)*
20. For considering an application for recall of sequestration (except on direction of a sheriff).	£100.00	*(No change to fee, but fee now applicable to any application)*
21. [F8] ...	[F8] . . .	[F8] . . .
22. [[F9]For considering determination of a debtor application in relation to a debtor to whom section 2(2) of the Act does not apply]		[[F9]£150]
(a) (a) a debtor to whom section 2(2) of the Act applies [M5];	[[F10]£50.00]	
(b) (b) any other debtor.	[[F11]£150.00]	
23. For an application to the court or AiB for a bankruptcy restrictions order.	£250.00	*(No change)*
24. For registering a court order appointing a replacement trustee.	£50.00	£19.00

Textual Amendments

F5 Sum in sch. Pt. 2 substituted (6.2.2023) by The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 (S.S.I. 2023/9), regs. 1, **4(3)(a)** (with reg. 4(4))

F6 Sum in sch. Pt. 2 substituted (6.2.2023) by The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 (S.S.I. 2023/9), regs. 1, **4(3)(b)** (with reg. 4(4))

F7 Sum in sch. Pt. 2 substituted (1.7.2024) by The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 (S.S.I. 2024/198), regs. 1(1), **8(3)** (with reg. 8(4))

F8 Sch. Pt. 2 item 21 omitted (31.12.2020) by virtue of The Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/94), regs. 1, **5(3)** (with reg. 9) (as amended by S.S.I. 2020/337, regs. 1, **2**); 2020 c. 1, **Sch. 5 para. 1(1)**

F9 Words in sch. Pt. 2 substituted (6.2.2023) by The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 (S.S.I. 2023/9), regs. 1, **4(3)(c)** (with reg. 4(4))

F10 Sum in sch. Pt. 2 substituted (29.3.2021) by The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/148), regs. 1, **9(3)(a)** (with reg. 3(d))

F11 Sum in sch. Pt. 2 substituted (29.3.2021) by The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/148), regs. 1, **9(3)(b)** (with reg. 3(d))

Marginal Citations

M5 Known as "minimal asset process" (or MAP) cases.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the fees and outlays payable to the Accountant in Bankruptcy ("AiB") in respect of the exercise of that office's functions under the Bankruptcy (Scotland) Act 2016 ("the 2016 Act"). They also prescribe when and in what manner certain bankruptcy fees and outlays are due for payment.

The Regulations revoke and replace the Bankruptcy Fees (Scotland) Regulations 2014 ("the 2014 Regulations"), subject to a saving for petitions and applications for sequestration lodged or trust deeds for the benefit of creditors granted before 1st June 2018. They are made following the 2016 Act consolidation and a review of fee rates.

Provision for fees and outlays payable to AiB and when and in what manner continue by virtue of the 2014 Regulations and sections 234(3) and 235(1), (2) and (4) of the 2016 Act.

The fees payable under the 2014 Regulations are shown in column 3 of the Table of Fees in the schedule of these Regulations ("table of fees"); where there is no change this is expressly stated. In some cases, the fees may be met as expenses in the distribution of the estate of the debtor (see section 129 of the 2016 Act).

The fees set by Part 1 of the table of fees relate to the exercise of AiB's functions of acting as interim trustee and trustee in sequestration (regulations 3 to 5). The fees set by Part 2 of the table of fees relate to other functions of AiB (regulations 6 to 11).

The 2014 Regulations would have been replaced in 2017 by S.S.I. 2017/37 but that instrument was revoked before it had effect (by S.S.I. 2017/97).

A Business and Regulatory Impact Assessment has been prepared for these Regulations and can be obtained from the Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning.

Changes to legislation:
There are currently no known outstanding effects for the The Bankruptcy Fees (Scotland) Regulations 2018.