
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”), the Bankruptcy (Scotland) Regulations 2016 (“the 2016 Regulations”) and the Bankruptcy Fees (Scotland) Regulations 2018 (“the 2018 Regulations”), to replace certain temporary measures in Part 5 of schedule 1 of the Coronavirus (Scotland) (No. 2) Act 2020 (“the 2020 Act”) with equivalent permanent provision. They also bring forward the expiry of the measures in the 2020 Act that are being replaced.

Regulations 4 and 5 amend the 2016 Act. Regulation 4 amends the total amount of a living debtor’s debts to be taken into account for sequestration of estate to be carried out by debtor application (known as the “minimal asset process”), from £17,000 to £25,000.

The regulation also provides that a debtor’s student loan, as defined under the Education (Scotland) Act 1980, is not to be regarded as debt when calculating total debt amount.

Regulation 5 amends the time limit for a trustee to submit proposals for a debtor contribution order to the Accountant in Bankruptcy, where an award of sequestration is made following a petition, from 6 weeks to 12 weeks.

Regulations 6 to 8 amend the 2016 Regulations. Regulation 6 makes amendments to the 2016 Regulations to allow electronic signatures to be used to sign prescribed forms required as part of the sequestration process. Regulations 7 and 8 amend two prescribed forms to take account of the amendments provided for by regulation 4.

Regulation 9(2) inserts a new regulation 7A into the 2018 Regulations which provides an exemption from fees for debtors in receipt of certain benefits or payments. Regulation 9(3) replaces the fees specified in item 22 of the table of fees set out in the schedule to the 2018 Regulations. The fee payable in respect of an application for the minimal asset process is £50 (replacing the prior fee of £90) and the fee payable in respect of an application for full administration bankruptcy is £150 (replacing the prior fee of £200).

A Business and Regulatory Impact Assessment has been prepared and is available online at www.legislation.gov.uk.