
STATUTORY INSTRUMENTS

1993 No. 439 (S.50)

INSOLVENCY

BANKRUPTCY, SCOTLAND

The Bankruptcy (Scotland) Amendment Regulations 1993

Made - - - - *3rd March 1993*

Laid before Parliament *11th March 1993*

Coming into force - - *1st April 1993*

The Secretary of State, in exercise of the powers conferred on him by sections 11(1), 15(6)(c), 54(2), 72, 72A and 73(1) of, and paragraph 4(2) of Schedule 2A and paragraphs 5(1)(c)(iii) and 5(3) of Schedule 5 to, the Bankruptcy (Scotland) Act 1985((1)) and of all other powers enabling him in that behalf, hereby makes the following regulations:

Citation and commencement

1. These Regulations may be cited as the Bankruptcy (Scotland) Amendment Regulations 1993 and shall come into force on 1st April 1993.

Interpretation

2. In these Regulations—

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

“the principal Regulations” means the Bankruptcy (Scotland) Regulations 1985((2)).

Application of these Regulations

3.—(1) Subject to paragraph (2) of this regulation, these Regulations and the amendments to, and revocations of, the principal Regulations made by them, shall not apply in relation to—

(a) any sequestration in respect of which the petition is presented before 1st April 1993;

(1) 1985 c. 66. Section 73(1) was amended by paragraph 29 of Schedule 1 to the Bankruptcy (Scotland) Act 1993 (c. 6) and contains definitions of “prescribed” and “statement of assets and liabilities” that are relevant to the exercise of the statutory powers under which these Regulations are made. Paragraph 4(2) of Schedule 2A, sections 15(6)(c) and 72A and paragraph 5(1)(c)(iii) and 5(3) of Schedule 5 were inserted respectively by section 6(2) of and paragraphs 4, 28 and 32(2) of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

(2) S.I. 1985/1925, as amended by S.I. 1986/1914.

- (b) any sequestration in respect of which the petition is presented on or after 1st April 1993 and before 1st October 1993 by a trustee acting under a trust deed granted before 1st April 1993; or
- (c) any trust deed granted before 1st April 1993,

and the principal Regulations, as in force immediately before 1st April 1993, shall continue to apply in relation to any such sequestration or trust deed.

(2) Paragraph (1) of this regulation shall not apply in relation to the amendments made to the principal Regulations by regulations 4 and 6(2) of these Regulations, but regulation 4 and the amendment made by it to the principal Regulations shall not apply in relation to any sequestration in respect of which the date of sequestration is before 1st April 1993.

(3) In this regulation, “trust deed” means a voluntary trust deed granted by or on behalf of the debtor whereby his estate is conveyed to the trustee for the benefit of his creditors generally.

Amendments to the principal Regulations

4. In regulation 8 of the principal Regulations (interest on claims in sequestration) for the words “15 per centum per annum” there shall be substituted the words “8 per centum per annum”.

5. There shall be inserted after regulation 14 of the principal Regulations, the following regulations:—

“Calling of statutory meeting of creditors

15. In subsections (1) and (3) of section 21 of the Act((3)) (period within which interim trustee must call statutory meeting of creditors) for the words “28 days” there shall be substituted the words “60 days”.

Notice of sequestration in Edinburgh Gazette by interim trustee

16. The information prescribed for the purposes of section 15(6) of the Act((4)) (obligation of interim trustee to publish notice of award of sequestration in Edinburgh Gazette), shall be:

- (a) the name, designation and address of the debtor, including, if he trades under a different name, his trading name and address;
- (b) the court which granted the award of sequestration including, in the case of a sheriff court, the name of that court;
- (c) the date of sequestration; and
- (d) the name, designation and office address of the interim trustee who has been appointed to act on the sequestrated estate of the debtor.

Notice of grant of certificate for the summary administration of the debtor’s estate in Edinburgh Gazette by permanent trustee

17. The information prescribed for the purposes of paragraph 4(2) of Schedule 2A to the Act((5)) (additional information to be contained in notice of grant of certificate for the summary administration of the debtor’s estate to be published in Edinburgh Gazette by permanent trustee, under paragraph 4(1) of that Schedule), shall be:—

(3) Section 21 was amended by paragraph 10 of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

(4) Section 15(6) was substituted by paragraph 4 of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

(5) Schedule 2A was inserted by section 6(2) of the Bankruptcy (Scotland) Act 1993.

- (a) the name, designation and address of the debtor, including, if he trades under a different name, his trading name and address;
- (b) the court which awarded sequestration and, if different, the court which granted the certificate for the summary administration of the sequestration of the debtor's estate including, in the case of a sheriff court, the name of that court;
- (c) the date of sequestration;
- (d) the name, designation and office address of the permanent trustee who has been appointed or confirmed to act on the sequestrated estate of the debtor.

Information to be sent by trustee acting under trust deed to creditors known to him

18. The information prescribed for the purposes of paragraph 5(1)(c)(iii) of Schedule 5 to the Act⁽⁶⁾ (information to be sent by the trustee acting under a trust deed to every creditor known to him) shall be:—

- (a) a statement of the debtor's affairs, prepared by the trustee, containing—
 - (i) a list of the debtor's assets and liabilities; and
 - (ii) a list of his income and expenditure, as at the date when the trust deed was granted; and
- (b) a statement as to the extent to which those assets and income have been or are due to be conveyed to the trustee for the benefit of his creditors.”.

6.—(1) The Schedule to the principal Regulations (which sets out the forms prescribed for the purposes of the provisions of the Act referred to therein) shall be amended as follows.

(2) In Form 8:—

- (a) in the first column of the notes at the beginning of the form—
 - (i) after the words “section 55 of the Act”⁽⁷⁾ there shall be inserted “(as amended)”;
 - and
 - (ii) in the quotation of subsection (1) of section 55 of the Act, for the words “subsection (2)” there shall be substituted the words “subsections (2) and (3)”;
- (b) in the second column of the notes, at the end of the quotation of subsection (2) of section 55 of the Act, there shall be inserted:—
 - “(3) the discharge of the debtor under the said section 54 shall not affect any right of a secured creditor—
 - (a) for a debt in respect of which the debtor has been discharged to enforce his security for payment of the debt and any interest due and payable on the debt until the debt is paid in full; or
 - (b) for an obligation in respect of which the debtor has been discharged to enforce his security in respect of the obligation.

By virtue of section 39(6) of the Drug Trafficking Offences Act 1986 (c. 32), section 45(5)(c) of the Criminal Justice (Scotland) Act 1987 (c. 41) and section 170(1) of and paragraph 109 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 55(2) of the Act has effect as if the reference to a fine included a reference to a confiscation order.”.

⁽⁶⁾ Paragraph 5(1)(c)(iii) of Schedule 5 was substituted by paragraph 32(2) of Schedule 1 to the Bankruptcy (Scotland) Act 1993.
⁽⁷⁾ Section 55 was amended by paragraph 23 of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

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(3) For Forms 4 and 10 there shall be substituted respectively Forms 4 and 10 in the Schedule to these Regulations.

Revocations

7. In the Schedule to the principal Regulations, the following provisions shall be revoked:—
- (a) in Form 2, in note (d), the words “amounting in aggregate, to not less than £750.”;
 - (b) Form 3; and
 - (c) Form 6.

St Andrew’s House,
Edinburgh
3rd March 1993

Fraser of Carmyllie
Minister of State, Scottish Office

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SCHEDULE

Regulation 6(3)

FORM 4

SCHEDULE

Regulation 6(3)

FORM 4

AIB Ref No:--
COURT Ref No:--
(for official use only)

STATEMENT OF ASSETS AND LIABILITIES

Bankruptcy (Scotland) Act 1985: Sections 5(6A)(a) and 19(2) (as amended), (statement of assets and liabilities to be lodged with debtor's petition for the sequestration of his estate and to be sent to the interim trustee by the debtor where the petitioner is a creditor or trustee acting under a trust deed)

WARNING TO THE DEBTOR

It is a criminal offence under sections 5(9) and 19(3) of the Bankruptcy (Scotland) Act 1985 (as amended) for you, unless you can show that you had a reasonable excuse, to-

- (a) fail, in the case where you have lodged this statement of assets and liabilities with a petition for the sequestration of your own estate, to send copies of this statement, as lodged in court with the petition, to-
 - (i) the Accountant in Bankruptcy on the day the petition is presented; and
 - (ii) the interim trustee, not later than 7 days after his appointment (where he is not the Accountant in Bankruptcy);
- (b) fail, in any other case, to send this statement to the interim trustee within 7 days of being notified of his appointment;
- (c) fail to disclose any material fact in this statement; or
- (d) make a material mis-statement therein,

On summary conviction you may be liable to a fine not exceeding level 5 on the standard scale or to imprisonment for a maximum period of three months or to both.

CERTIFICATION

I (insert your name and address)

have stated overleaf all my assets, liabilities, income and expenditure as at-

- *(a) the date of signing this document
- *(b) the date of sequestration of my estate, on _____ (specify date)

Note: *delete as appropriate

Delete paragraph (b) where you have completed this statement of assets and liabilities in order to lodge it with a petition for the sequestration of your own estate. In any other case delete paragraph (a). Where paragraph (b) applies the date of sequestration is the date on which the court granted warrant to cite you to appear before it.

I certify that the details contained in this document are true, complete and accurate to the best of my knowledge and belief.

Signature of debtor: _____

Date: _____

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Debts due to you

4. Give details of any debts owed to you, stating the name and address of the person or body by whom the debt is owed.

Name and address of debtor	Amount due (£)	When due

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PART 3 – INCOME

	Average Weekly Amount £
Income from earnings (net of tax)	
Other income eg. pensions, income bonds, benefits etc. (please specify)	
Total income	£

PART 4 – EXPENDITURE

	Average Weekly Amount £
Rent/Mortgage	
Fuel (eg, gas, electricity etc)	
Food	
Clothing	
Travel	
Council tax and/or rates	
Other expenditure eg insurance, telephone, etc (please specify)	
Total expenditure	

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Regulation 6(3)

FORM 10

NOTICE IN EDINBURGH GAZETTE BY TRUSTEE UNDER A TRUST DEED FOR THE BENEFIT OF CREDITORS

Bankruptcy (Scotland) Act 1985: Schedule 5, paragraph 5(3)

Notes

The trust deed will become a protected trust deed unless, within the period of 5 weeks of the date of publication of this notice in the Edinburgh Gazette, a majority in number or not less than one third in value of the creditors notify the trustee in writing that they object to the trust deed and do not wish to accede to it.

The effect of this is that paragraphs 6 and 7 of Schedule 5 to the Act will apply to the trust deed. Briefly, this has the effect of restricting the rights of non-acceding creditors to do diligence (ie to enforce court decrees for unpaid debts) against the debtor and confers certain protection upon the trust deed from being superseded by the sequestration of the debtor's estate.

Notes

Trust deed for creditors by

(a) _____

A trust deed has been granted by

(b) _____

on (c) _____

conveying (to the extent specified in section 5(4A) of the Bankruptcy (Scotland) Act 1985) his estate to me

(d) _____

as trustee for the benefit of his creditors generally.

If a creditor wishes to object to the trust deed for the purposes of preventing it becoming a protected trust deed (see notes above on the objections required for that purpose) notification of such objection must be delivered in writing to the trustee within 5 weeks of the date of publication of this notice in the *Edinburgh Gazette*

Signature of trustee _____

Date _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Bankruptcy (Scotland) Regulations 1985 (S.I.1985/1925), (“the principal Regulations”).

Regulation 3(1) of these Regulations provides that, subject to the provisions of regulation 3(2), the amendments to and the revocations of the principal Regulations provided for in these Regulations are not to apply to any sequestrations in respect of which the petition is presented, or to any trust deed which has been granted, before 1st April 1993, or to any sequestration in respect of which the petition is presented, on or after, that date and before 1st October 1993, by a trustee acting under a trust deed granted before 1st April 1993. The principal Regulations, as in force immediately before 1st April 1993, are to continue to apply in relation to any such sequestration or trust deed.

Regulation 3(2) of these Regulations provides that regulation 3(1) is not to apply in relation to amendments made to the principal Regulations by regulation 4 (which amends the prescribed rate of interest on debts between the date of sequestration and the date of payment of the debt) and by regulation 6(2) (which amends the notes in Form 8 in the Schedule to the principal Regulations). It also provides that the amendment made by regulation 4 shall not apply in relation to any sequestration where the date of sequestration is before 1st April 1993.

Regulation 4 of these Regulations amends regulation 8 of the principal Regulations, which prescribes the rate of interest for the purposes of section 51(7) of the Bankruptcy (Scotland) Act 1985 (c. 66), (“the Act”), (interest on preferred debts and ordinary debts between the date of sequestration and the date of payment of the debt), by prescribing a new rate of interest of 8 per centum per annum. That will be the prescribed rate of interest, for the purposes of section 51(7) of the Act, in any sequestration where the date of sequestration is on or after 1st April 1993.

Regulation 5 of these Regulations amends the principal Regulations by inserting four additional regulations.

The new regulation 15 of the principal Regulations amends section 21 of the Act by increasing the period within which the interim trustee is required to call a statutory meeting of creditors from 28 days to 60 days, after the date of the award of sequestration.

The new regulation 16 of the principal Regulations prescribes the information that an interim trustee must include in the notice of his appointment which he publishes in the Edinburgh Gazette under section 15(6) of the Act.

The new regulation 17 of the principal Regulations prescribes the information that a permanent trustee must include in the notice of the grant of a certificate for the summary administration of the sequestration of the debtor’s estate, which he publishes in the Edinburgh Gazette under paragraph 4 of Schedule 2A to the Act.

The new regulation 18 of the principal Regulations prescribes the information that the trustee acting under a trust deed must send to every creditor known to him, in the course of the procedure which may lead to the trust deed becoming a protected trust deed.

Regulation 6 of and the Schedule to these Regulations amend Forms 4, 8 and 10 in the Schedule to the principal Regulations.

Regulation 7 of these Regulations revokes part of note (d) to Form 2, and revokes Forms 3 and 6, in the Schedule to the principal Regulations.

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