

2012 No. 118

INSOLVENCY

BANKRUPTCY

The Bankruptcy Fees etc. (Scotland) Regulations 2012

Made - - - - - *18th April 2012*

Laid before the Scottish Parliament *20th April 2012*

Coming into force in accordance with regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(4B)(b), 69A and 72(1) of the Bankruptcy (Scotland) Act 1985(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Bankruptcy Fees etc. (Scotland) Regulations 2012.

(2) These Regulations come into force—

- (a) on 1st June 2012 in respect of items 1 and 2 (administration fee) in Part 1, and item 21 (debtor application) in Part 2, of the Table of Fees in Schedule 1; and
- (b) on 1st July 2012, insofar as not provided for in sub-paragraph (a).

Interpretation

2. In these Regulations—

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

“Bankruptcy restrictions order” means an order made under section 56A of the 1985 Act(b);

“Bankruptcy restrictions undertaking” means an undertaking offered in terms of section 56G of the 1985 Act(c);

“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;

(a) 1985 c.66 (“the 1985 Act”). Section 5(4B)(b) was inserted by section 14(3)(b) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”). Section 69A of the 1985 Act was inserted by section 8 of the Bankruptcy (Scotland) Act 1993 (c.6) (“the 1993 Act”). Section 72(1) was amended (and renumbered) by section 35 of the 2007 Act. Section 73(1) of the 1985 Act contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made. 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). The 1985 Act was significantly amended by the 1993 Act, sections 1 to 8 and Schedule 1, by the 2007 Act, Part I (except for sections 3, 4, 33 and 34), schedule 1, schedule 5, paragraph 13, and schedule 6, Part 1, and by article 8 of S.S.I. 2008/82.

(b) Section 56A was inserted by section 2(1) of the 2007 Act.

(c) Section 56G was inserted by section 2(1) of the 2007 Act.

“statutory fee” means any fee payable under an enactment;

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

“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 assigned by section 5(4A) of the 1985 Act(a).

Fees and outlays as interim trustee or trustee

3. The fees payable to the Accountant in Bankruptcy in respect of the exercise of that office’s functions as interim trustee or trustee in a sequestration, which are specified in column 1 of Part 1 of the Table of Fees in Schedule 1 are the fees calculated in accordance with the rates specified in relation to those functions in column 2 of that table.

4. The outlays payable to the Accountant in Bankruptcy 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 publication of notices in the Edinburgh Gazette;
- (b) the making of searches in any public register;
- (c) the valuation of property;
- (d) legal services and related expenses;
- (e) estate agency services;
- (f) the services of auctioneers and valuers;
- (g) services related to taxation matters;
- (h) travel and subsistence expenses; and
- (i) the payment by the Accountant in Bankruptcy under section 1B(4) of the 1985 Act(b) of a fee to a person appointed under section 1B(2) of that Act to perform any of the functions of the Accountant in Bankruptcy as interim trustee or trustee.

5. Any fees and outlays payable to the Accountant in Bankruptcy 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) the Accountant in Bankruptcy 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 1985 Act—
 - (i) section 26A(3)(b)(c) (determination of fees and outlays where Accountant in Bankruptcy was interim trustee and some other person becomes trustee);
 - (ii) section 53(1), as adapted by paragraph 9(2) of Schedule 2(d) (determination of fees and outlays at end of each accounting period where Accountant in Bankruptcy is trustee);
 - (iii) section 58A(2)(c)(e) (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee);
 - (iv) paragraph 9(1A) of Schedule 4(f) (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee where offer of composition is approved); and

(a) Section 5(4A) was inserted by section 3(4) of the Bankruptcy (Scotland) Act 1993.

(b) Section 1B was inserted by section 1 of the Bankruptcy (Scotland) Act 1993.

(c) Section 26A was inserted by paragraph 15(1) of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

(d) Paragraph 9(2) was substituted by paragraph 30(10) of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

(e) Section 58A was inserted by paragraph 26 of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

(f) Paragraph 9 of Schedule 4 was amended by paragraph 31(3) of Schedule 1 to the Bankruptcy (Scotland) Act 1993.

- (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 1985 Act—
 - (i) section 26A(5) and (6);
 - (ii) section 53(4), as adapted by paragraph 9(2) of Schedule 2;
 - (iii) section 58A(5) and (6);
 - (iv) paragraph 9(3) of Schedule 4.

Other fees

6. The fees payable to the Accountant in Bankruptcy 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 in Schedule 1 are the fees specified in relation to those functions in column 2 of that table.

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

Manner of payment

8. A fee payable to the Accountant in Bankruptcy, in respect of a function specified in Part 2 of the Table of Fees in Schedule 1, is due for payment—

- (a) on the relevant application for these services being made to the Accountant in Bankruptcy—
 - (i) item 10 (granting of certificate of discharge to a debtor);
 - (ii) item 11 (providing a certified copy entry in the register of insolvencies);
 - (iii) item 12 (certifying any other document);
 - (iv) item 13(a) (providing a photocopy of any document); and
 - (v) item 21 (determination of a debtor application);
- (b) in respect of the function in item 17(b) (protected trust deed supervision), in advance of each 12 month period of supervision (or part of such a period)—
 - (i) on the date of registration of the protected trust deed under regulation 10(2) of the Protected Trust Deeds (Scotland) Regulations 2008(a); and
 - (ii) on the date beginning each following 12 month period of supervision; and
- (c) in respect of any other such function, on performance by the Accountant in Bankruptcy of that function.

9. A fee payable to the Accountant in Bankruptcy in respect of the function specified in item 21 (determination of a debtor application) of Part 2 of the Table of Fees in Schedule 1 is payable whether or not it is subsequently determined in favour of the applicant.

10. A fee payable to the Accountant in Bankruptcy in respect of a function specified in Part 2 of the Table of Fees in Schedule 1 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 not permissible

11. The fees in Part 2 of the Table of Fees in Schedule 1 payable to the Accountant in Bankruptcy may not be waived by the Accountant in Bankruptcy in whole or in part.

(a) S.S.I. 2008/143; regulation 10(2) was amended by S.S.I. 2010/398, regulation 7(c).

Repayment of fees - failure of protected trust deed

12. Any fee charged by the Accountant in Bankruptcy under item 17(b) of Part 2 of the Table of Fees in Schedule 1 for a 12 month period of supervision (or part of such a period) must be repaid if—

- (a) the debtor who granted the protected trust deed fails to meet the debtor's obligations for the purpose of regulation 19(1)(a) of the Protected Trust Deeds (Scotland) Regulations 2008(a); and
- (b) the trustee under that trust deed is discharged during the 12 month period.

Repayment of fees - refusal of bankruptcy restrictions order

13.—(1) Where a sheriff does not grant an application for a bankruptcy restrictions order under section 56A(1) of the 1985 Act, 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 the Accountant in Bankruptcy under item 22 of Part 2 of the Table of Fees in Schedule 1 must be repaid.

Consequential amendment of Bankruptcy (Scotland) Regulations 2008

14. In Form 9 (debtor application) prescribed in the Schedule to the Bankruptcy (Scotland) Regulations 2008(b), at Q29 (payment process) and at 29 (payment process) for “£100” substitute “£200”.

Trust deeds protected before 1st July 2012 – saving

15.—(1) These Regulations do not apply in respect of any trust deed which becomes a protected trust deed(c) before 1st July 2012.

(2) The Regulations revoked by regulation 16 continue to apply in respect of those trust deeds.

Revocation of Bankruptcy Fees (Scotland) Regulations 1993 etc.

16. The Regulations specified in Schedule 2 are revoked (subject to regulation 15(2)).

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
18th April 2012

(a) S.S.I. 2008/143, amended by S.S.I. 2010/398.

(b) S.S.I. 2008/334, relevantly amended to substitute Form 9 by S.S.I. 2010/367.

(c) See regulation 3 of the Protected Trust Deeds (Scotland) Regulations 2008 (S.S.I. 2008/143), amended by S.S.I. 2010/398.

SCHEDULE 1
TABLE OF FEES

Regulations 3 and 6

PART 1

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

<i>Column 1 (Functions)</i>	<i>Column 2 (Rates)</i>	<i>Column 3 (Former Rates)</i>
1. In respect of each hour of work in the exercise by the Accountant in Bankruptcy of that office's functions as interim trustee in a sequestration where the Accountant in Bankruptcy is not appointed as trustee in that sequestration.	£100 per hour	£39 per hour for first 5 hours; £69 per hour for each subsequent hour
2. In respect of each hour of work in the exercise by the Accountant in Bankruptcy of that office's functions as interim trustee or trustee in a sequestration, other than in respect of the realisation of assets in the sequestrated estate.	£100 per hour	£39 per hour for first 21 hours; £69 per hour for each subsequent hour
3. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as trustee in a sequestration in relation to the realisation of assets in the sequestrated estate—		
(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) on the first £10,000 or fraction thereof;	15% of that amount	5% of that amount
(ii) on the next £10,000 or fraction thereof;	5% of that amount	1% of that amount
(iii) on all further sums;	2% of that amount	0.5% of that amount
(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—		5% of the proceeds of sale (across all sums)
(i) on the first £10,000 or fraction thereof;	15% of that amount	
(ii) on the next £10,000 or fraction thereof;	5% of that amount	

<i>Column 1 (Functions)</i>	<i>Column 2 (Rates)</i>	<i>Column 3 (Former Rates)</i>
(iii) on all further sums;	2% of that amount	0.5% of that amount
4. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as interim trustee or trustee in a sequestration in ingathering the estate of the debtor.	25% of funds ingathered	None
5. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as trustee in relation to the payment of dividends to creditors—		£78 plus £39 in respect of each creditor who is paid a dividend.
(i) on the first £10,000 or fraction thereof;	10% of that amount	
(ii) on the next £10,000 or fraction thereof;	5% of that amount	
(iii) on all further sums.	2% of that amount	

PART 2

Fees for other functions of the Accountant in Bankruptcy

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
1. For registering award of sequestration.	£20.00	(No change)
2. For administration of—		
(a) any petition by a creditor, trustee under a protected trust deed or the executor of a deceased debtor;	£100.00	£200.00
(b) any such petition where following award of sequestration the Accountant in Bankruptcy is the trustee (in addition to item 2(a)).	£200.00	None
3. For supervising proceedings in sequestration—		
(a) where commissioners have been elected;	£139.00	(No change)
(b) where no commissioners have been elected;	£210.00	(No change)
(c) where the Accountant in Bankruptcy is the trustee.	£139.00	(No change)

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
4. For supervising payment of dividend to creditors where no commissioners have been elected.	£69.00	<i>(No change)</i>
5. For any special report to the court.	£69.00	<i>(No change)</i>
6. 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 the Accountant in Bankruptcy of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	<i>(No change)</i>
7. For issuing a determination fixing the outlays and remuneration payable to— (a) an interim trustee; or (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.	<i>(No change)</i>
8. For examination of the sederunt book and related work, in connection with the discharge of a trustee.	£36.00	<i>(No change)</i>
9. For granting a certificate of discharge to an interim trustee.	£36.00	<i>(No change)</i>
10. For granting a certificate of discharge to a debtor.	£11.00	<i>(No change)</i>
11. For providing a certified copy of an entry in the register of insolvencies.	£24.00	<i>(No change)</i>
12. For the certifying of any other document (excluding copying charges).	£17.00	<i>(No change)</i>
13. For providing a copy of any document— (a) by photocopying— (i) 10 pages or less; (ii) each page after first 10; (b) in an electronic medium or by printout from records held on computer – per document.	£11.00 £0.32 £0.13	<i>(No change)</i> <i>(No change)</i> <i>(No change)</i>

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
14. For attendance at any meeting of creditors – fee per hour or part thereof, including travelling time.	£69.00	<i>(No change)</i>
15. For calling any meeting of creditors.	£36.00	<i>(No change)</i>
16. For attendance at any examination of the debtor – fee per hour or part thereof, including travelling time.	£69.00	<i>(No change)</i>
17. In respect of protected trust deeds—		
(a) for registering a protected trust deed(a);	£36.00	<i>(No change)</i>
(b) for supervision of a trustee under a protected trust deed.	£100.00 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).	£250.00
18. 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.	<i>(No change)</i>
19. 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 consignment.	£26.00	<i>(No change)</i>
20. For uplifting any unclaimed dividend consigned in an appropriate bank or institution, in respect of each creditor.	£26.00	<i>(No change)</i>
21. For determination of a debtor application.	£200.00	£100.00
22. For an application for a bankruptcy restrictions order.	£250.00	<i>(No change)</i>
23. For accepting and issuing a bankruptcy restrictions undertaking.	£150.00	<i>(No change)</i>

(a) Under regulation 10(2) of the Protected Trust Deeds (Scotland) Regulations 2008 (S.S.I. 2008/143), as amended by S.S.I. 2010/398, regulation 7(c).

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
24. For registering a court order appointing a replacement trustee.	£19.00	<i>(No change)</i>
25. For petitioning for the replacement of a trustee acting in more than one sequestration.	£200.00	<i>(No change)</i>

SCHEDULE 2
REVOCATIONS

Regulation 16

<i>Regulations revoked</i>	<i>References</i>
The Bankruptcy Fees (Scotland) Regulations 1993	S.I. 1993/486; amended by S.I. 1999/752 and S.S.I. 2007/220, 2008/5 and 79, 2009/97, 2010/76 and 2011/142.
The Bankruptcy Fees (Scotland) Amendment Regulations 1999	S.I. 1999/752
The Bankruptcy Fees (Scotland) Amendment Regulations 2007	S.S.I. 2007/220
The Bankruptcy Fees (Scotland) Amendment Regulations 2008	S.S.I. 2008/5
The Bankruptcy Fees (Scotland) Amendment (No. 2) Regulations 2008	S.S.I. 2008/79
The Bankruptcy Fees (Scotland) Amendment Regulations 2009	S.S.I. 2009/97
The Bankruptcy Fees (Scotland) Amendment Regulations 2010	S.S.I. 2010/76
The Bankruptcy Fees (Scotland) Amendment Regulations 2011	S.S.I. 2011/142

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the fees and outlays payable to the Accountant in Bankruptcy in respect of the exercise of that office's functions under the Bankruptcy (Scotland) Act 1985 ("the 1985 Act"). They also prescribe when and in what manner certain fees and outlays are due for payment.

They revoke and replace the Bankruptcy Fees (Scotland) Regulations 1993 ("the 1993 Regulations") and the amending instruments set out in Schedule 2 to these Regulations, subject to a saving in regulation 15 for trust deeds protected before 1st July 2012.

The fees formerly payable under the 1993 Regulations are shown in column 3 of the Table of Fees in Schedule 1 to these Regulations; 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 51 of the 1985 Act).

The fees set by Part 1 of the table of fees in Schedule 1 to the Regulations relate to the exercise of the Accountant in Bankruptcy's functions of acting as interim trustee and trustee in sequestration (regulations 3 to 5). The fees set by Part 2 of that table of fees relates to other fees charged by the Accountant in Bankruptcy (regulations 6 to 13).

Regulation 14 makes a minor amendment to the form for a debtor application for sequestration consequential on a fee increase under these Regulations.

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.

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