
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 118

The Bankruptcy Fees etc. (Scotland) Regulations 2012

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(1);
- “Bankruptcy restrictions undertaking” means an undertaking offered in terms of section 56G of the 1985 Act(2);
- “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;
- “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(3).

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—

(1) Section 56A was inserted by section 2(1) of the 2007 Act.
(2) Section 56G was inserted by section 2(1) of the 2007 Act.
(3) Section 5(4A) was inserted by section 3(4) of the Bankruptcy (Scotland) Act 1993.

- (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⁽⁴⁾ 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)⁽⁵⁾ (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⁽⁶⁾ (determination of fees and outlays at end of each accounting period where Accountant in Bankruptcy is trustee);
 - (iii) section 58A(2)(c)⁽⁷⁾ (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee);
 - (iv) paragraph 9(1A) of Schedule 4⁽⁸⁾ (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee where offer of composition is approved); 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 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⁽¹³⁾.

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

(4) Section 1B was inserted by section 1 of the Bankruptcy (Scotland) Act 1993.
 (5) Section 26A was inserted by paragraph 15(1) of Schedule 1 to the Bankruptcy (Scotland) Act 1993.
 (6) Paragraph 9(2) was substituted by paragraph 30(10) of Schedule 1 to the Bankruptcy (Scotland) Act 1993. Schedule 2 was repealed by section 11(6) of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#), but saved by article 5(2) of [S.S.I. 2008/115](#) in respect of sequestration petitions presented before the 1st April 2008.
 (7) Section 58A was inserted by paragraph 26 of Schedule 1 to the Bankruptcy (Scotland) Act 1993.
 (8) Paragraph 9(1A) was amended by paragraph 31(3) of Schedule 1 to the [Bankruptcy \(Scotland\) Act 1993](#) (“the 1993 Act”) and paragraph 1 of Schedule 6 to the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (“the 2007 Act”).
 (13) [S.S.I. 2008/143](#); regulation 10(2) was as amended by [S.S.I. 2010/398](#), regulation 7(c).

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⁽⁹⁾; 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.

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⁽¹⁰⁾; and
- (b) the trustee under that trust deed is discharged during the 12 month period.

⁽⁹⁾ Paragraph 9(3) was amended by paragraph 31(3) of Schedule 1 to the 1993 Act and prospectively amended by section 21(5) of the 2007 Act.

⁽¹⁰⁾ S.S.I. 2008/143, amended by S.S.I. 2010/398.

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(11), 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(12) 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)).

St Andrew’s House,
Edinburgh
18th April 2012

FERGUS EWING
Authorised to sign by the Scottish Ministers

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

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