
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about various matters to implement provisions of the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) which amended the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”).

Regulations 3 and 4 prescribe persons who can act as money advisers in relation to sequestration under the 1985 Act, including the classes of—

insolvency practitioners and persons who work for them who have been given authority by the insolvency practitioner to act on behalf of that insolvency practitioner

persons approved for the purposes of the Debt Arrangement Scheme

persons working as money advisers for organisations awarded Type 2 against Scottish National Standards for Information and Advice Provision, full bureau members of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland; or councils.

Regulation 4 provides for who may not be a money adviser, including those whose approval is revoked by the Accountant in Bankruptcy in specific cases.

Regulations 5 prescribes additional matters on which debtors must obtain money advice in making a debtor application for sequestration. Regulation 6 sets out procedural requirements for obtaining money advice in connection with debtor applications under the 1985 Act.

Regulation 7 amends the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010 which provides for a certificate that the debtor has demonstrated he or she is not able to pay his or her debts as they become due, in consequence of the 2014 Act. Those authorised to grant certificates are replaced by money advisers under section 5C of the 1985 Act as amended by the 2014 Act. The form of the Certificate of Sequestration is replaced with the form in Schedule 1 to these Regulations, which can be included in the debtor application for sequestration.

Regulation 8 makes provision for the forms of instructions by the debtor or trustee under section 32E of the Act to an employer or third party due to make payment to the debtor for deductions from earnings or other income. It also provides for how the instruction affects the recipient and what happens if the employer or third person refuse to pay the deduction.

Regulations 10 revokes the Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 in consequence of the 2014 Act. Regulation 9 continues in effect regulation 4 of those Regulations, amending section 39A of the Bankruptcy (Scotland) Act 1985 to add certain actions for gratuitous alienations to the circumstances which preclude a family home reinvesting in the debtor 3 years after sequestration. Regulation 11 saves the regulations relevant to low income, low asset debtors in respect of sequestrations where the debtor application was made before 1st April 2015, as those sequestrations will continue under the existing low income, low asset provisions to the end of those sequestrations.

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy’s website: <http://www.aib.gov.uk>.