

EXECUTIVE NOTE TO
THE BANKRUPTCY FEES (SCOTLAND) AMENDMENT REGULATIONS 2008
SSI 2008/ 5

The above instrument will, if approved, be made in exercise of the powers conferred by sections 69A, 72 and 73(1) of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

This instrument amends the Bankruptcy Fees (Scotland) Regulations 1993⁽¹⁾, which came into force on 1 April 1993.

Bankruptcy Fees

The Bankruptcy Fees (Scotland) Regulations stipulate the charges levied by the Accountant in Bankruptcy (“AiB”) in respect of her statutory functions as described in the Bankruptcy (Scotland) Act 1985 (as amended). The Table of Fees is divided into 2 parts. Part 1 lists the fees payable for the functions of the Accountant in Bankruptcy in respect of the functions carried out as interim and/or permanent trustee in a bankruptcy (“the Trustee”). Part 2 lists the fees payable for all other statutory functions of the Accountant.

The fees are paid from ingathered funds in the debtor’s estate. These funds may be from contributions from the debtor or assets realised by the Trustee. For cases where the Accountant in Bankruptcy is appointed as Trustee the fees are met from the public purse as part of the overall AiB budget from Justice Directorate when the realisation of the debtor’s estate results in insufficient funds. Where the Accountant is not appointed as Trustee the fees stated in Part 2 of the Schedule are paid to the AiB by the Trustee from the debtor’s estate even where there is no realisation of assets or contributions from the debtor.

Purpose of the reforms in the above instrument

To amend the level of fees listed on the Schedule which were last adjusted in 1999 by the Bankruptcy Fees (Scotland) Amendment Regulations 1999 by 20%.

The changes are to reflect the increase in inflation since the last uprating was carried out in 1999 based on figures obtained from the UK Consumer Price Index for the period 1999 to 2007.

The Regulations also move the definition of “non-profit-making body” into the principal regulations and make minor clarifications to the drafting of two of the categories of fees. They revoke the Schedule of fees substituted by the Bankruptcy Fees (Scotland) Amendment Regulations 1999 and amendments to that Schedule in the Bankruptcy Fees (Scotland) Amendment Regulations 2007 to be superseded by the new Schedule added by these Regulations.

⁽¹⁾ S.I. 1993/486, as amended by S.I. 1999/752 and S.I. 2007/220.

Consultation

There has been no formal consultation on the reforms in this instrument, as the changes reflect the increase in inflation since the last uprating was carried out in 1999. It is the intention to review fee rates and to uprate annually, as required, to minimise the costs to the public purse for the administration and supervision of bankruptcies.

The principal Regulations will require to be changed again as part of the reforms contained within the Bankruptcy and Diligence etc. (Scotland) Act 2007 when new functions to be carried out by the Accountant in Bankruptcy are introduced in April 2008.

Financial Effect

The Regulations introduce an increase to the fees of 20% which represents the increase in inflation over the period 1999 to 2007.

The introduction of these Regulations will effect those estates that are able to meet these costs directly. When the Accountant in Bankruptcy is appointed Trustee and estate do not hold sufficient funds the fees will continue to be paid by the public purse. Where the estate is sufficient to make a payment to creditors the increase in fees will effect the amount of any dividend.

A Regulatory Impact Assessment has not been prepared.

Accountant in Bankruptcy
9 January 2008