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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 225**

**The Bankruptcy (Scotland) Regulations 2014**

*Sequestration Process*

**Debtor applications**

5.—(1) A debtor application to the Accountant in Bankruptcy—

- (a) in the case of an application by a living debtor, or by the executor (or a person entitled to be appointed executor) on the estate of a deceased debtor, must be in Form 14;
- (b) in the case of an application by an entity referred to in section 6(1) of the 1985 Act, must be in Form 15 accompanied by a statement of assets and liabilities in Form 16.

(2) Where in a debtor application the debtor nominates an insolvency practitioner to act as the trustee in the sequestration and the insolvency practitioner agrees to act, the application must be accompanied by the insolvency practitioner's written undertaking to act as the trustee in Form 17.

(3) The Accountant in Bankruptcy or Depute Accountant in Bankruptcy must daily sign a Schedule in Form 18 listing those debtors whose estates have been sequestrated that day, and must enter the Schedule into the register of insolvencies.

(4) The Accountant in Bankruptcy must notify in writing debtors in respect of whom an award of sequestration has been made without delay after the award of sequestration.

(5) Where the Accountant in Bankruptcy refuses to award sequestration, the Accountant in Bankruptcy or Depute Accountant in Bankruptcy must complete and sign a Form 19 in respect of the debtor and without delay send a copy to the applicant, or applicants, in the debtor application.

(6) Where the Accountant in Bankruptcy awards sequestration the certified notice of the determination to be sent by the Accountant in Bankruptcy to the Keeper of the Registers of Scotland for recording in terms of section 14(1A) of the 1985 Act<sup>(1)</sup> must be in Form 20 and the certification is to be by the Accountant in Bankruptcy, Depute Accountant in Bankruptcy or any other person authorised by the Accountant in Bankruptcy to certify the notice of the determination on behalf of the Accountant in Bankruptcy.

(7) A certified notice containing an electronic signature, in a form to be agreed between the Accountant in Bankruptcy and the Keeper of Registers of Scotland, of a determination referred to in paragraph (6) may be sent by the Accountant in Bankruptcy to the Keeper of the Registers of Scotland electronically<sup>(2)</sup>.

**Sequestration where debtor has few assets (“Minimal Asset Process”): prescribed payments**

6.—(1) The payments specified in paragraph (2) are prescribed for the purposes of section 5(2ZA) (a)(ii) of the 1985 Act<sup>(3)</sup> (criteria for sequestration where debtor has few assets).

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(1) Section 14(1A) was inserted by the 2007 Act, schedule 1, paragraph 12.

(2) This regulation re-enacts, with modifications, regulation 14 of the Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82) (“the 2008 Regulations”) as amended by S.S.I. 2010/367.

(3) Section 5(2ZA) was inserted by the 2014 Act, section 5.

(2) Where the debtor has no other income (than from any of these payments) at the date of making his or her debtor application—

- (a) universal credit under Part 1 of the Welfare Reform Act 2012<sup>(4)</sup>;
- (b) another income-related benefit (as defined in section 191 of the Social Security Administration Act 1992<sup>(5)</sup>);
- (c) an income-based jobseeker's allowance, as defined by section 1(4) of the Jobseekers Act 1995<sup>(6)</sup>;
- (d) state pension credit under the State Pension Credit Act 2002<sup>(7)</sup>;
- (e) child tax credit under the Tax Credits Act 2002<sup>(8)</sup>; or
- (f) an income-related allowance under Part 1 of the Welfare Reform Act 2007<sup>(9)</sup> (employment and support).

### **Debt advice and information package**

7.—(1) Subject to paragraph (2) the time prescribed for the purposes of section 5(2D) of the 1985 Act<sup>(10)</sup> is not less than 14 days before the presentation of the petition and not more than 12 weeks before the presentation of the petition.

(2) The requirement to provide the debtor with a debt advice and information package in section 5(2D) of the 1985 Act does not apply where it is averred that the address of the debtor is not known<sup>(11)</sup>.

### **Application of the 1985 Act to limited partnerships**

8.—(1) The application of the 1985 Act to the sequestration of the estate of a limited partnership is subject to the modifications specified in this regulation.

(2) Any reference in the 1985 Act or in legislation made under that Act (unless the context suggests otherwise) to a partnership (other than in section 6(1)) or to a firm shall be construed as including a reference to a limited partnership.

(3) In the application of section 9 of the 1985 Act<sup>(12)</sup> to limited partnerships—

- (a) the Accountant in Bankruptcy has jurisdiction if a limited partnership is registered in Scotland and has a place of business in Scotland; and
- (b) the sheriff has jurisdiction if a limited partnership is registered in Scotland and has a place of business within the sheriff's sheriffdom.

(4) Without prejudice to the provisions of sections 14(1), 15(5) and 17(8) of the 1985 Act<sup>(13)</sup>, the sheriff clerk must send a copy of every court order mentioned in those sections to the Registrar of Limited Partnerships in Scotland.

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(4) 2012 c.5.

(5) 1992 c.5. This definition, and the relevant provisions are repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c.5) subject to saving and transitional provisions.

(6) 1995 c.18, repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c.5), subject to saving and transitional provisions.

(7) 2002 c.16.

(8) 2002 c.21.

(9) 2007 c.5.

(10) Section 5(2D) was inserted by the 2007 Act, section 26.

(11) This regulation re-enacts regulation 12 of the 2008 Regulations.

(12) Section 9 was amended by the 2007 Act, section 14, section 16 and schedule 1, paragraph 7, the 2014 Act, schedule 3, paragraph 8 and by S.I. 2003/2109.

(13) Section 14(1) was amended by the 2007 Act, schedule 1, paragraph 12, the 2014 Act, schedule 3, paragraph 11 and by S.S.I. 2004/468, S.S.I. 2011/141 and S.S.I. 2013/225. Section 15(5) was amended by the 2007 Act, section 16 and by S.S.I. 2011/141. Section 17(8) was amended by the 2007 Act, section 16 and schedule 6 and the 2014 Act, section 26, schedule 3, paragraph 14 and schedule 4.

(5) In the case of a debtor application by a limited partnership, the Accountant in Bankruptcy must send a copy of the determination to the Registrar of Limited Partnerships in Scotland(14).

### **Apparent Insolvency/Creditor Debt Threshold**

9. The sum prescribed for the purposes of section 7(1)(d) of the 1985 Act(15) is £1500(16).

### **Claims in foreign currency**

10. A creditor may state the amount of that creditor's claim in a foreign currency for the purposes of section 22(6), or that section as applied by section 48(7), of the 1985 Act(17),—

- (a) where the claim is constituted by decree or other order made by a court ordering the debtor to pay to the creditor a sum expressed in a foreign currency; or
- (b) where the claim is not so constituted, it arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the debtor to the creditor in a foreign currency(18).

### **Conversion of foreign currency claims**

11. For the purposes of sections 23(1)(a) and 49(3) of the 1985 Act(19), the manner of conversion into Sterling of the amount of a claim stated in foreign currency is to be at the rate of exchange for that currency at the mean of the buying and selling spot rates prevailing at the close of business on the date of sequestration in the London market as published in any national newspaper(20).

### **Trustee resignation application**

12. An application under section 28(1) of the 1985 Act(21) by a trustee for authority to resign must be in Form 21(22).

### **Abandonment of heritable property by trustee**

13.—(1) Where a trustee (other than the Accountant in Bankruptcy) has abandoned to the debtor any heritable property, notice of abandonment for the purposes of section 32(9A) of the 1985 Act(23) must be in Form 22.

(2) Where a trustee, being the Accountant in Bankruptcy, abandons any heritable property in the circumstances referred to in paragraph (1), notice of abandonment must be in Form 23.

(3) The certified copy of that notice of abandonment sent under section 32(9B)(24) of the 1985 Act may be sent electronically by the Accountant in Bankruptcy to the Keeper of the Registers of Scotland containing an electronic signature in a form to be agreed between the Accountant in Bankruptcy and the Keeper of Registers of Scotland.

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(14) This regulation re-enacts regulation 9 of the 2008 Regulations.

(15) Section 7(1) was amended by the Criminal Justice (Scotland) Act 1987 (c.41), section 45, the Criminal Justice Act 1988 (c.33), Schedule 15, paragraph 108, the Drug Trafficking Act 1994 (c.37), Schedule 1, paragraph 10 and Schedule 3, the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 15, the 2007 Act, schedule 6, the 2014 Act, schedule 3, paragraph 7 and by S.I. 2003/2109 and S.S.I. 2011/141.

(16) This regulation re-enacts regulation 13 of the 2008 Regulations.

(17) Section 48(7) was amended by the 2007 Act, schedule 6 and the 2014 Act, schedule 3, paragraph 24.

(18) This regulation re-enacts regulation 4 of the 2008 Regulations.

(19) Section 23(1) and section 49(3) were amended by the 2007 Act, schedule 6.

(20) This regulation re-enacts regulation 5 of the 2008 Regulations.

(21) Section 28(1) was amended by the 1993 Act, Schedule 1, paragraph 17 and the 2007 Act, section 9 and schedule 1, paragraph 28.

(22) This regulation re-enacts regulation 17 of the 2008 Regulations.

(23) Section 32(9A) was inserted by the 2007 Act, section 19.

(24) Section 32(9B) was inserted by the 2014 Act, section 19.

(4) The Accountant in Bankruptcy, Depute Accountant in Bankruptcy or any other person authorised by the Accountant in Bankruptcy must certify that copy on behalf of the Accountant in Bankruptcy(25).

#### **Debtor contribution orders**

14.—(1) A debtor contribution order under section 32A(1)(a) of the 1985 Act(26) must be in Form 24.

(2) A debtor contribution order under section 32A(1)(b) of the 1985 Act must be in Form 25.

#### **Notice by trustee of proceedings to obtain authority in relation to debtor's family home**

15. A notice by a trustee, or by a trustee acting under a trust deed, for the purposes of section 40(3A) of the 1985 Act(27) must be in Form 26(28).

#### **Debtor's requirement to give account of state of affairs**

16. A debtor's account of that debtor's current state of affairs for the purposes of section 43A(2) of the 1985 Act(29) must be in Form 27(30).

#### **Financial education**

17. The course of financial education prescribed for the purposes of section 43B(1) of the 1985 Act(31) is—

- (a) the Scottish Financial Education Module learning materials divided into sections and published under that title by Money Advice Scotland(32); or
- (b) all of the sections of that Module except for any section where the debtor's circumstances indicate the debtor does not require financial education on the topic of that section, in relation to any of the following topics—
  - (i) budgeting and financial planning;
  - (ii) saving;
  - (iii) borrowing;
  - (iv) insurance;
  - (v) tax;
  - (vi) financial life stages (financial considerations in relation to renting or buying a home, having a baby and loss of employment);
  - (vii) welfare benefits.

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(25) This regulation re-enacts regulation 19 of the 2008 Regulations.

(26) Section 32A was inserted by the 2014 Act, section 4.

(27) Section 40(3A) was inserted by the 2010 Act, section 11 and the 2014 Act, section 49.

(28) This regulation re-enacts regulation 19A of the 2008 Regulations. Regulation 19A of the 2008 Regulations was inserted by S.S.I. 2010/367.

(29) Section 43A was inserted by the 2007 Act, section 30 and was amended by the 2014 Act, Schedule 3, paragraph 22.

(30) This regulation re-enacts regulation 20 of the 2008 Regulations.

(31) Section 43B was inserted by the 2014 Act, section 2.

(32) Money Advice Scotland is a company registered in Scotland with registered number SC137717, registered charity in Scotland registration number SC005663. The Scottish Financial Education Module is available at <http://www.moneyadvicescotland.org.uk/>.

### **Interest on claims in sequestration**

**18.** The prescribed rate of interest for the purposes of section 51(7)(a) of the 1985 Act (interest on preferred debts and ordinary debts between the date of sequestration and the date of payment of the debt) is 8 per cent per annum**(33)**.

### **Certificate of deferral**

**19.** A certificate deferring indefinitely the discharge of the debtor under section 54D(4)(b) or (6) **(34)** must be in Form 28.

### **Premium of bond of caution**

**20.** Any premium (or a proportionate part of any premium) of any bond of caution or other security required to be given by an insolvency practitioner in respect of the practitioner's actings as interim trustee or trustee in any sequestration in which the practitioner is elected or appointed may be taken into account as part of that practitioner's outlays in that sequestration**(35)**.

### **Preference for remuneration of employees, etc.**

**21.** The prescribed amount for the purposes of paragraphs 5(1) and 6 of Schedule 3 to the 1985 Act (the maximum amount which can be claimed as a preferred debt by an employee by way of remuneration or by a person under the Reserve Forces (Safeguard of Employment) Act 1985**(36)**) is £800**(37)**.

Moratorium on diligence

### **Moratorium on diligence: notice of intention to apply**

**22.—**(1) A notice given by a person for the purposes of section 4A(1) of the 1985 Act**(38)** (notice of intention to apply: debtor application etc.) must be in Form 29.

(2) A notice given by a person for the purposes of section 4B(1) of the 1985 Act**(39)** (notice of intention to apply: sequestration of estate under section 6) must be in Form 30.

Revocations and sequestration before 1st April 2015

### **Revocations**

**23.** The following provisions are revoked, subject to regulation 24—

- (a) regulations 3 to 7 and 9 to 22 of, and the Schedule to, the Bankruptcy (Scotland) Regulations 2008**(40)**;
- (b) the Bankruptcy (Scotland) Amendment Regulations 2008**(41)**; and
- (c) regulation 3 of, and Schedules 1 and 2 to, the Bankruptcy (Scotland) Amendment Regulations 2010**(42)**.

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**(33)** This regulation re-enacts regulation 6 of the 2008 Regulations.

**(34)** Section 54D was inserted by the 2014 Act, section 19.

**(35)** This regulation re-enacts regulation 7 of the 2008 Regulations.

**(36)** 1985 c.17.

**(37)** This regulation re-enacts regulation 10 of the 2008 Regulations.

**(38)** Section 4A was inserted by the 2014 Act, section 8.

**(39)** Section 4B was inserted by the 2014 Act, section 8.

**(40)** S.S.I. 2008/82 as amended by S.S.I. 2008/334 and S.S.I. 2010/367.

**(41)** S.S.I. 2008/334.

**(42)** S.S.I. 2010/367.

### Sequestration before 1st April 2015

24.—(1) Except as mentioned in paragraph (2)—

(a) these Regulations have no effect as regards any sequestration in respect of which—

(i) the petition is presented before 1st April 2015; or

(ii) a debtor application was made before that date; and

(b) the Regulations revoked by regulation 23, as in force immediately before 1st April 2015, continue to apply and have effect in relation to any such sequestration.

(2) Paragraph (1) does not apply to—

(a) Form 6(43);

(b) regulation 4 of, and Schedule 2 to, these Regulations.

(3) Notwithstanding paragraph (2)(b), no requirement for the register of insolvencies to contain particulars is to require the particulars of any event which occurred before 1st April 2015 to be contained in the register.

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(43) Form 6 (Notice by Trustee: Public Examination of the Debtor or a Relevant person) is the form prescribed for the purpose of section 45(3)(a) of the 1985 Act. Section 45 of the 1985 Act was amended by the 2007 Act, schedule 6 and the 2014 Act, section 24(2).