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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations re-enact, with modifications, the Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82) except for regulation 8 of those Regulations. They make provision following amendments to the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) by the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”).

Subject to regulation 24 (sequestration before 1st April 2015), these Regulations come into force on 1st April 2015.

Regulation 3 and Schedule 1 provide for the main forms to be used in relation to sequestration.

Regulation 4 makes provision about the register of insolvencies which it is the function of the Accountant in Bankruptcy to maintain (section 1A(1)(b) of the 1985 Act refers).

Regulation 5 makes provision in relation to debtor applications (an application made by a debtor to the Accountant in Bankruptcy for an award of sequestration under the 1985 Act).

Regulation 6 provides for “prescribed payments” of social security benefits as part for the criteria for eligibility for the Minimal Asset Process (“MAP”) where the debtor has few assets under section 5(2ZA) of the 1985 Act.

Regulation 7 makes provision in relation to the requirement in section 5(2D) of the 1985 Act for a debtor to be provided with a debt advice and information package prior to presentation of a petition for sequestration by a qualified creditor or qualified creditors of the debtor.

Regulation 8 makes modifications of the 1985 Act in its application to limited partnerships.

Regulation 9 prescribes £1,500 as the amount of debt a creditor must be owed to establish ‘apparent insolvency’ by an expired statutory demand for payment of debt in terms of section 7(1)(d) of the 1985 Act.

Regulation 10 prescribes the circumstances in which a creditor may state the amount of the creditor’s claim in foreign currency for voting purposes at a statutory meeting and submission of claims to a trustee under sections 22 and 48 of the 1985 Act respectively.

Regulation 11 prescribes the manner in which the trustee is required to convert a creditor’s claim made in foreign currency for the purposes of proceedings at a statutory meeting and the adjudication of creditors’ claims under sections 23 and 49 of the 1985 Act respectively.

Regulation 12 provides for the form of application to be completed by the trustee where the trustee seeks authority to resign office under section 28 of the 1985 Act.

Regulation 13 provides for the form of notice to be given to the debtor under section 32(9A) of the 1985 Act where the trustee has abandoned to the debtor any heritable property included in the debtor’s sequestrated estate.

Regulation 14 makes provision for form of debtor contribution orders under section 32A(1)(a) and (b) of the 1985 Act, added by the 2014 Act to replace income payment orders under section 32(2) of the 1985 Act.

Regulation 15 provides for the form of notice to be given to the local authority by the trustee or a trustee under a trust deed before proceedings are commenced for authority to sell or dispose of any right or interest in the debtor’s family home under section 40 of the 1985 Act.

Regulation 16 provides for the form of a debtor’s current state of affairs to be given under section 43A of the 1985 Act.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 17 provides for the courses of financial education which a debtor may be required to undertake by the trustee under section 43B(1) of the 1985 Act.

Regulation 18 prescribes 8% per annum as the rate of interest to be paid on the preferred debts and the ordinary debts between the date of sequestration and the date of payment of the debt for the purposes of section 51 of the 1985 Act (order of priority in distribution of the debtor's estate).

Regulation 19 provides for the form of certificate under section 54D(4)(b) or (6)(b) deferring indefinitely the discharge of the debtor.

Regulation 20 provides that the premium of any bond of caution or other security given by an insolvency practitioner in relation to acting as interim trustee or trustee may be taken into account as part of the insolvency practitioner's outlays in the sequestration.

Regulation 21 restates the prescription of £800 as the maximum amount which may 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 (paragraphs 5 and 6 of Schedule 3 to the 1985 Act refer). In restating the law on reserved matters by virtue of paragraph 7 of Schedule 4 to the Scotland Act 1998 (c.46) the law as restated remains reserved law.

Regulation 22 provides for forms of notice to be given by a person for the purposes of sections 4A and 4B of the 1985 Act to trigger the moratorium on diligence having effect under sections 4C and 4D of the 1985 Act.

Regulation 23 revokes the relevant parts of [S.S.I. 2008/82](#) and amending instruments, subject to regulation 24. These Regulations do not except as provided for in regulation 24 apply to sequestrations where the creditor petition for sequestration was presented before 1st April 2015 or the debtor application for sequestration was received by the Accountant in Bankruptcy before that date.

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>.