
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 226

**INSOLVENCY
BANKRUPTCY
DEBT**

**The Bankruptcy (Applications and
Decisions) (Scotland) Regulations 2014**

<i>Made</i>	- - - -	<i>20th August 2014</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>21st August 2014</i>
<i>Coming into force</i>	- -	<i>1st April 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 71C, 72(1A) and 72A of the Bankruptcy (Scotland) Act 1985⁽¹⁾ and all other powers enabling them to do so.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014.

(2) They come into force on 1st April 2015.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Bankruptcy (Scotland) Act 1985;

(1) 1985 c.66 (“the 1985 Act”). Section 71C and 72(1A) were inserted respectively by section and 36 of and paragraph 34(a) of schedule 3 to the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) (“the 2014 Act”). Section 72A was inserted by paragraph 28 of Schedule 1 to the Bankruptcy (Scotland) Act 1993 (c.6). Section 73(1) of the 1985 Act contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

“the Accountant” means the Accountant in Bankruptcy; and
“review application” has the meaning given by regulation 20(1).

(2) Any reference in these Regulations—

- (a) to a form is to be construed as a reference to the form so numbered in the Schedule or a form substantially to the same effect, with such variation as circumstances may require;
- (b) to a time when an application is made is to be construed as a reference to the time when the application is received by the Accountant.

PART 2

Applications: general

Applications

3.—(1) Any application to the Accountant under the Act for which a Form is prescribed by these Regulations (including a review application) may be made—

- (a) by personal delivery;
- (b) by being sent to the address of the Accountant at 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000⁽²⁾); or
 - (ii) by a postal service which provides for the delivery of the document to be recorded;
- (c) by email or using the computer system provided by the Accountant for that purpose; or
- (d) by such other means as the Accountant may agree to.

(2) Such an application must specify the name and address of the applicant, and (where relevant) the details of the applicant’s representative.

Application form: first instance applications to the Accountant in Bankruptcy

4.—(1) An application to the Accountant under the following provisions of the Act must be made in writing in Form 1 (application to Accountant in Bankruptcy: general)—

- (a) section 17A(1) (recall of sequestration: where the only ground is that the debtor has paid or is able to pay debts in full)⁽³⁾;
- (b) section 25(3)(a) (objection to election of replacement trustee)⁽⁴⁾;
- (c) section 28A(7)(a) (trustee replacement in more than one sequestration)⁽⁵⁾;
- (d) section 29(1A)(a) (removal of trustee)⁽⁶⁾;
- (e) section 29(6A)(a) (declaration of office of trustee as vacant)⁽⁷⁾;
- (f) section 42(2A)(b) (contractual powers of trustee)⁽⁸⁾;

(2) 2000 c.26.

(3) Section 17A is inserted by section 27 of the 2014 Act.

(4) Section 25(3) is substituted by section 28(1) of the 2014 Act.

(5) Section 28A is substituted by section 29 of the 2014 Act.

(6) Section 29(1A) is inserted by section 30(b) of the 2014 Act.

(7) Section 29(6A) is inserted by section 30(g) of the 2014 Act.

(8) Section 42(2A) is inserted by section 32 of the 2014 Act.

- (g) section 56E(3) (annulment or variation of bankruptcy restrictions order)(9);
 - (h) section 63A(2)(a) (power of Accountant in bankruptcy to cure defects in procedure)(10); and
 - (i) paragraph 3(2)(b) of Schedule 1 (valuing contingent debts)(11).
- (2) Form 1 must also be used (where the Accountant is the applicant or trustee) for—
- (a) representations under section 28A(10) of the Act (trustee replacement in more than one sequestration); and
 - (b) representations under section 63A(5) of the Act (curing defect in procedure).

Application procedure: first instance applications to the Accountant in Bankruptcy

5.—(1) This regulation applies to any application (except a review application) under the Act for which a Form is prescribed by these Regulations.

- (2) A copy of such an application must, before the application is made, be sent by the applicant—
- (a) to any person specified in the Act as a person—
 - (i) to be notified of the application;
 - (ii) able to make representations in relation to the application; or
 - (iii) able to review or appeal the decision on that application; and
 - (b) to any other interested person.
- (3) Under paragraph (2), the application must be sent to the proper address of the person—
- (a) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000); or
 - (b) by a postal service which provides for the delivery of the document to be recorded.

(4) An applicant required to send an application under paragraph (2), or ordered to serve an application by the Accountant under the Act or paragraph (6), must inform the recipient in writing that the person has the right to make representations to the Accountant in relation to the application before the expiry of any period provided for in the Act or paragraph (10).

(5) The applicant must, if requested to do so by the Accountant, provide the Accountant with evidence of delivery of that application to the persons to whom it has been delivered.

(6) The Accountant may require the application to be sent by the applicant to such persons as the Accountant deems appropriate.

(7) Where an application is incomplete it may be rejected by the Accountant.

(8) Where an application is unopposed it must be granted without the attendance of parties, unless the Accountant directs otherwise.

(9) Any representations made under the Act by any person in relation to an application must be made in writing by any means by which an application may be made (see regulation 3(1)).

(10) Where no time limit for such representations is specified in the Act or these Regulations, the representations must be made before the expiry of the period of 14 days beginning with the day on which the application was made.

(11) Paragraphs (2) to (4) and (9) do not apply to the extent that equivalent provision is made in the Act or these Regulations, or service is ordered by the Accountant under a provision of the Act.

(9) Section 56E(3) was inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”) and amended by section 33(6)(b) of the 2014 Act.

(10) Section 63A is inserted by section 35(3) of the 2014 Act.

(11) Paragraph 3(2) of Schedule 1 is amended by section 37(a) of the 2014 Act.

- (12) In paragraph (3) the “proper address” of a person means—
- (a) in the case of a body corporate, the address of the registered or principal office of the body;
 - (b) in the case of a partnership, the address of the principal office of the partnership;
 - (c) in any other case, the last known address of the person.

Inquiries

6.—(1) This regulation applies where in relation to any application (including a review application) required to be on a form under these Regulations or any representation under the Act the Accountant considers that—

- (a) further information is required in relation to the application or representation; or
- (b) further evidence is required to substantiate any fact relevant to the application or representation.

(2) The Accountant may before any date set out in the Act for the decision of the Accountant specify by notice in writing—

- (a) any further information which is to be provided; and
- (b) any further evidence which is to be provided,

within 21 days from the date of sending that notice or such shorter period as may be specified in the notice.

(3) Where a notice is given under paragraph (2)—

- (a) any time limit set out in the Act for the decision of the Accountant is extended by the period specified in the notice; and
- (b) if the information or evidence specified is provided to the Accountant, the period allowed for the decision of the Accountant after the date on which it is provided is the greater of—
 - (i) the unexpired days before the original time limit would have elapsed (ignoring its extension) after the date on which that notice was given; or
 - (ii) a period of 7 days.

(4) The Accountant may refuse to consider an application if, after the expiry of the period specified under paragraph (2), the Accountant considers that the applicant has provided insufficient information or evidence specified under that paragraph.

(5) Where the Accountant has set any time limit for the giving of written evidence under these Regulations, the Accountant must not consider any written evidence which is not given in accordance with those time limits unless satisfied that there is good reason to do so.

Further evidence

7.—(1) The Accountant may, if satisfied there is a good reason to do so following written representations, or evidence or information in response to inquiries, in respect of an application for which a form is required under these Regulations (other than a review application) require in writing any person making an application or representations—

- (a) to attend a hearing, at such time and place as the Accountant may specify, for the purposes of giving evidence;
- (b) to give the Accountant, by such day as the Accountant may specify, such documents or information as the Accountant may reasonably require.

(2) Paragraph (1) does not authorise the Accountant to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in the Court of Session.

(3) The Accountant may determine such further procedure in relation to the hearing as the Accountant considers appropriate.

(4) Where a person is required to attend or give documents or information under paragraph (1)—

(a) any time limit set out in the Act for the decision of the Accountant is extended until the date of the hearing or the day specified, as the case may be; and

(b) following the date of the hearing or the day specified, as the case may be, the period allowed for the decision of the Accountant is the greater of—

(i) the unexpired days before that time limit would have elapsed (ignoring its extension) after the date on which the person was required by the Accountant to attend the hearing or give documents or information under paragraph (1); or

(ii) a period of 7 days.

PART 3

Specific applications

Application for direction by trustee

8.—(1) An application to the Accountant under section 3A(2) of the Act (application for direction)(**12**) must be made in writing in Form 2.

(2) Where an application is made under that subsection, the Accountant must before the expiry of the period of 28 days beginning with the day on which the application is made—

(a) give a direction; or

(b) refer the matter to the sheriff under section 3A(3) of the Act.

Recall of sequestration by Accountant in Bankruptcy

9.—(1) Where the statement of the debtor's affairs is not submitted in accordance with section 17B(3)(a) of the Act (recall where the only ground is that the debtor has paid or is able to pay debts in full)(**13**), the application is not to be considered by the Accountant until it is submitted.

(2) Where paragraph (1) applies the Accountant may make inquiries under regulation 6.

(3) The Accountant must send to the persons listed in section 17A(2) of the Act a copy of the Accountant's decision under section 17D(1) or 17E(6) of the Act.

(4) The Accountant must send with any notification under section 17E(2) of the Act (recall where the only ground is that debtor has paid or is able to pay the debtor's debts in full: Accountant acting as trustee)(**14**)—

(a) a statement of the debtor's affairs; and

(b) a copy of the application for recall,

and advise the recipients of the period for making representations under section 17E(5)(a) of the Act.

(5) Where the Accountant gives notification under section 17E(2) of the Act, the Accountant must also notify any other interested person, informing the recipient that the person has the right to make representations to the Accountant in relation to the application before the expiry of the period of 21 days beginning with the day on which the notice is given.

(12) Section 3A is inserted by section 25(2) of the 2014 Act.

(13) Sections 17A, 17B and 17E are inserted by section 27 of the 2014 Act.

(14) Section 17A is inserted by section 27 of the 2014 Act.

(6) Where recall is under consideration (including on a review application), and sequestration is recalled by the Accountant, the Accountant must at that time consider whether to annul under section 56J(4) of the Act⁽¹⁵⁾ any bankruptcy restrictions order (or interim order) in effect in relation to the debtor.

(7) Where an original review decision is amended or revoked on review, the Accountant must send a certified copy of the revised decision to the Keeper of the Register of Inhibitions for recording in that register.

Appointment of replacement trustee

10.—(1) A report to the Accountant under section 25(2)(a) of the Act⁽¹⁶⁾ of a statutory meeting appointing a replacement trustee must be made in writing in Form 4.

(2) If the Accountant declares an elected person to be trustee under section 25(5) of the Act, the Accountant must send a copy of the decision to the original trustee and the replacement trustee.

(3) Where the Accountant gives an opportunity to make representations under section 25A(2) of the Act (on receiving an objection), the Accountant must—

- (a) notify the original and replacement trustees, the objector and any other interested person; and
- (b) advise those persons that written submissions under section 25A(2) must be made before the expiry of the period of 14 days beginning with the date on which the notification was given.

(4) The Accountant must notify the original and replacement trustees, the objector and any other interested person of any declaration or order under section 25A(3) of the Act.

Replacement trustee acting in more than one sequestration

11. A determination or appointment under section 28A of the Act⁽¹⁷⁾ (replacement trustee acting in more than one sequestration) must be made by the Accountant before the expiry of the period of 14 days following the expiry of the period under section 28A(10) of the Act.

Removal of trustee and trustee not acting

12.—(1) An order under section 29(1)(b) of the Act (removal of trustee from office by the Accountant in Bankruptcy)⁽¹⁸⁾ must be made in writing in Form 5.

(2) Where the trustee has the opportunity to make representations under section 29(2)(c) of the Act⁽¹⁹⁾, the Accountant must allow the period of 21 days beginning with the date on which the copy application was sent under section 29(2)(a) of the Act for those representations.

(3) The Accountant must before the expiry of the period of 14 days beginning after the expiry of that period of 21 days—

- (a) decide whether to remove or refuse to remove the trustee (or make any other order) under section 29(1)(b) or (3)⁽²⁰⁾ of the Act; or
- (b) refer the matter to the sheriff under section 29(6I)(a) of the Act⁽²¹⁾.

⁽¹⁵⁾ Section 56J(4) is inserted by section 33(8) of the 2014 Act.

⁽¹⁶⁾ Sections 25, 25A and 25B are substituted by section 28(1) of the 2014 Act.

⁽¹⁷⁾ Section 28A is substituted by section 29 of the 2014 Act.

⁽¹⁸⁾ Section 29(1)(b) is amended by section 30(a) of the 2014 Act.

⁽¹⁹⁾ Section 29(2) is substituted by section 30(c) of the 2014 Act.

⁽²⁰⁾ Section 29(2) and (3) are substituted by section 30(c) and (d) of the 2014 Act.

⁽²¹⁾ Section 29(6I) is inserted by section 30(g) of the 2014 Act.

(4) Before making any declaration or order under section 29(6) of the Act~~(22)~~, the Accountant must give the trustee an opportunity to make representations.

(5) In the case of an application under section 29(6A)(a) of the Act, the Accountant must before the expiry of the period of 14 days beginning after the expiry of the period for representations under regulation 5(10)—

- (a) decide whether to make any declaration (or any other order) under section 29(6); or
- (b) refer the matter to the sheriff under section 29(6I)(a) of the Act.

(6) The Accountant must notify the trustee, the debtor, commissioners or any creditor of any order or decision under section 29(1)(b), (3) or (6) of the Act.

(7) Where a review application is made under section 29, the Accountant must notify any commissioners required to call a meeting under section 29(5) or (6C) of the Act~~(23)~~.

(8) The requirement to hold that meeting under section 29(5) or (6D)~~(24)~~ within 28 days—

- (a) is extended until the date of the review decision (or any appeal from that decision); and
- (b) on that decision (or any appeal from that decision) the period allowed for holding the meeting is the greater of—
 - (i) the unexpired days before the period specified in section 29(5) or (6D) of the Act would have elapsed (ignoring its extension) after the date on which the review application was made; or
 - (ii) the period of 28 days.

(9) Where a review decision is made under section 29 of the Act, the Accountant must notify any commissioners required to call a meeting under section 29(5) or (6C) of the Act.

Contractual powers of trustee

13.—(1) Where an application is made under section 42(2A)(b) of the Act (contractual powers of trustee)~~(25)~~, the Accountant must before the expiry of the period of 14 days beginning with the day on which the application is made—

- (a) decide whether to extend the 28 day period for the trustee to adopt or refuse to adopt a contract under section 42(2) of the Act; or
- (b) refer the matter to the sheriff under section 42(2E) of the Act.

(2) The Accountant must notify all interested persons—

- (a) of any decision of the Accountant on such an application; and
- (b) of any direction of the sheriff within 7 days of receipt of that direction.

(3) For the avoidance of doubt, the time limit in paragraph (1) does not apply to any review application.

Bankruptcy restrictions orders: proposal to make an order

14.—(1) The Accountant must allow the period of 14 days beginning with the day on which notice is given under section 56A(3) of the Act (proposal to make bankruptcy restrictions order)~~(26)~~ for representations by the debtor.

~~(22)~~ Section 29(6) is substituted by section 30(g) of the 2014 Act.

~~(23)~~ Section 29(5) and (6C) are respectively amended and inserted by section 30(f) and (g) of the 2014 Act.

~~(24)~~ Section 29(6D) is substituted by section 30(g) of the 2014 Act.

~~(25)~~ Section 42(2A) and (2E) are inserted by section 32 of the 2014 Act.

~~(26)~~ Section 56A is substituted by section 33(1) of the 2014 Act.

(2) Those representations must be made in writing by any means by which an application may be made (see regulation 3(1)).

(3) Notice under section 56A(3) informing the debtor under section 56A(4) of the Act must also inform the debtor—

- (a) of the reasons for proposing to make the order;
- (b) of any grounds for proposing an interim bankruptcy restrictions order;
- (c) that the representations must be made—
 - (i) in writing (including by email or using the computer system); and
 - (ii) before the expiry of 14 days beginning with the date on which the notice was given (or in the case of any proposed interim bankruptcy restrictions order, before the expiry of the period of 2 days beginning with the date on which the notice was given).

(4) The Accountant must make or decide not to make the bankruptcy restrictions order before the expiry of 21 days beginning with the date on which the notice was given.

Bankruptcy restrictions orders: annulment or variation

15.—(1) Where an application is made to the Accountant under section 56E(3) of the Act (to annul or vary a bankruptcy restrictions order)(**27**), the Accountant must notify all interested persons that those persons have the right to make representations to the Accountant in relation to the application before the expiry of the period of 21 days beginning with the day on which the application is made.

(2) Those representations must be made in writing by any means by which an application may be made (see regulation 3(1)).

(3) Where following recall of sequestration the Accountant refuses under section 56J(4)(**28**) of the Act to annul a bankruptcy restrictions order, the Accountant must inform the debtor that the debtor has the right to apply to the Accountant for review of that decision before the expiry of the period of 14 days beginning with the day on which the award of sequestration was recalled.

Conversion of protected trust deed into bankruptcy

16.—(1) An application to the Accountant under section 59A(1) of the Act (conversion of protected trust deed into sequestration)(**29**) must be made in writing in Form 6.

(2) An award under section 59C(1) of the Act (power of Accountant in Bankruptcy: conversion of protected trust deed into sequestration) must be made in writing in Form 7.

(3) Where the Accountant makes, or refuses to make, an order for conversion into sequestration, the Accountant must inform the member State liquidator, the debtor, the trustee and any other person who has been served with a copy of the application and the affidavit.

Power to cure defects

17. Where the Accountant makes, or refuses to make, under section 63A of the Act (curing defects in procedure)(**30**) a corrective order or to waive a time limit, the Accountant must notify all interested persons.

(27) Section 56E was inserted by section 2(1) of the 2007 Act and amended by section 33(6)(b) of the 2014 Act.

(28) Section 56J was inserted by section 2(1) of the 2007 Act and amended by section 33(8) of the 2014 Act.

(29) Sections 59A, 59B and 59C were inserted by the Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109) and amended by section 34 of the 2014 Act.

(30) Section 63A is inserted by section 35(3) of the 2014 Act.

Debts depending on contingency

18. Where the Accountant puts a value on a debt under paragraph 3(2) of Schedule 1 to the Act (debts depending on a contingency)(31), the Accountant must notify the creditor and all other interested persons.

PART 4

Reference to sheriff and review by Accountant in Bankruptcy

Reference to sheriff: time limits

19. Where the Accountant has applied to refer or remit a matter to the sheriff under the Act—
- (a) if the sheriff (or a court on appeal from the sheriff) makes any disposal which requires the Accountant to make an order, declaration or decision, the period allowed for the decision of the Accountant is the greater of—
 - (i) the unexpired days before the time limit set out in the Act for that decision would have elapsed (ignoring its reference or remit) after the date on which the reference or remit was made; or
 - (ii) a period of 7 days;
 - (b) if the sheriff's (or the court's) disposal has no such requirement, that time limit does not apply.

Review applications

20.—(1) An application for a review by the Accountant under the following provisions of the Act must be made in writing in Form 3—

- (a) section 3A(4) (power of direction of trustee)(32);
- (b) section 13A(10A) (interim trustee termination)(33);
- (c) section 13B(6A) (Accountant in Bankruptcy interim trustee termination)(34);
- (d) section 15(3A) (refusal of sequestration on debtor application)(35);
- (e) section 17G(1) (recall: only ground that debtor has paid or is able to pay debts in full)(36);
- (f) section 18(3A) (interim preservation)(37);
- (g) section 25A(5) (appointment of replacement trustee)(38);
- (h) section 26A(4A) (Accountant in Bankruptcy to account for intromissions)(39);
- (i) section 27(3A) (discharge of original trustee)(40);
- (j) section 28B(1) (trustee replacement in more than one sequestration)(41);

(31) Paragraph 3 of Schedule 1 is amended by section 37 of the 2014 Act.

(32) Section 3A is inserted by section 25(2) of the 2014 Act.

(33) Section 13A was inserted by section 10 of the 2007 Act and amended by section 38(1) of the 2014 Act.

(34) Section 13B was inserted by section 10 of the 2007 Act and amended by section 38(2) of the 2014 Act.

(35) Section 15(3A) is substituted by section 39 of the 2014 Act.

(36) Section 17G is inserted by section 27 of the 2014 Act.

(37) Section 18(3A) is inserted by section 38(3) of the 2014 Act.

(38) Section 25A(5) is inserted by section 28(1) of the 2014 Act.

(39) Section 26A (4A) is inserted by section 40(1)(b) of the 2014 Act.

(40) Section 27(3A) is inserted by section 40(2) of the 2014 Act.

(41) Section 28B is inserted by section 29 of the 2014 Act.

- (k) section 29(3A) (removal of trustee)(42);
 - (l) section 29(6E) (removal - declaring vacancy)(43);
 - (m) section 32C(1) (debtor contribution order)(44);
 - (n) section 32H(1) (variation and payment break)(45);
 - (o) section 42(2B) (contractual powers of trustee)(46);
 - (p) section 49(6) (adjudication of claims)(47);
 - (q) section 54B(1) (discharge)(48);
 - (r) section 54G(1) (discharge – subsequent contact)(49);
 - (s) section 56J(5) (refusal to annul bankruptcy restrictions order);
 - (t) section 57(3B) (discharge of private trustee)(50);
 - (u) section 58A(4A) (Accountant in Bankruptcy discharge as trustee)(51);
 - (v) section 63B(1) (curing defects)(52); and
 - (w) paragraph 3(3) of Schedule 1 (valuing contingent debts).
- (2) A review application must specify—
- (a) the decision to be reviewed and its date;
 - (b) the change sought to the decision; and
 - (c) the reasons for seeking that change.
- (3) When a review application is made to the Accountant, the Accountant must—
- (a) without delay send a copy to any person specified in the provision of the Act which provides for the review as a person to be notified, able to make representations or appeal against the review decision; and
 - (b) advise those persons that they have the period of 21 days beginning with the date specified in the Act to make representations to the Accountant.
- (4) Those representations must be made in writing by any means by which an application may be made (see regulation 3(1)).
- (5) On making a review decision under the relevant provision of the Act, the Accountant must notify the persons mentioned in paragraph (3)(a) of the Accountant’s decision.
- (6) Paragraphs (3) to (5) do not apply to the extent that equivalent provision is made in the Act.

Review proceedings: staff of the Accountant in Bankruptcy

21.—(1) No member of the staff of the Accountant who was involved in a decision under review may be involved in the review decision.

(42) Section 29(3A) is inserted by section 30(d) of the 2014 Act.

(43) Section 29(6E) is inserted by section 30(g) of the 2014 Act.

(44) Section 32C is inserted by section 4 of the 2014 Act.

(45) Section 32H is inserted by section 4 of the 2014 Act.

(46) Section 42(2B) is inserted by section 32 of the 2014 Act.

(47) Section 49(6) is inserted by section 41 of the 2014 Act.

(48) Section 54B is inserted by section 17 of the 2014 Act.

(49) Section 54G is inserted by section 19 of the 2014 Act.

(50) Section 57(3B) is inserted by section 42(1) of the 2014 Act.

(51) Section 58A(4A) is inserted by section 42(2) of the 2014 Act.

(52) Section 63B is inserted by section 35(3) of the 2014 Act.

(2) If the Accountant herself or himself was involved in a decision under review, the Accountant must not be involved in any review decision (and is accordingly unable to exercise those functions in which case the Depute Accountant may act in accordance with section 1(2) of the Act⁽⁵³⁾).

Review decision

22. The decision of the Accountant and a statement of reasons on the review application will be made publicly available.

St Andrews House
Edinburgh
20th August 2014

FERGUS EWING
Authorised to sign by the Scottish Ministers

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

SCHEDULE

Regulations 2(2)(a), 4, 8(1),10(1), 12(1),
16(1) and (2) and 20(1)

Forms

List of forms to be used

<i>Form</i>	<i>Purpose</i>	<i>Relevant provision of the Regulations</i>
1	Application to Accountant in Bankruptcy: general	Regulation 4
2	Application for direction under section 3A(2)	Regulation 8(1)
3	Application for review: general	Regulation 20(1)
4	Report of statutory meeting appointing replacement trustee: section 25(2)(a)	Regulation 10(1)
5	Grant of removal of trustee: section 29(1) (b)	Regulation 12(1)
6	Conversion of protected trust deed into bankruptcy: section 59A application	Regulation 16(1)
7	Conversion of protected trust deed into bankruptcy: section 59A award	Regulation 16(2)

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FORM 1

Application to Accountant in Bankruptcy: general

Internal Only:
Bankruptcy Ref:
Date Received

Application to Accountant in Bankruptcy: general
Bankruptcy (Scotland) Act 1985 (as amended)

Reason for Application:
(Please state the nature
of your application)

Section of the Act you are applying under:
(Please provide the appropriate section of the
Act you are applying under)

Debtor's name:
(Please provide full details)

Debtor's address at date of bankruptcy award:

Bankruptcy reference number:

Name of Applicant:
(Please provide full name and title
of person submitting the application)

Designation:
(e.g. debtor, creditor, trustee, officer)

List of relevant parties notified of this application:
(please include details of their association with the bankruptcy)

Date notification issued to relevant parties:
(where appropriate)

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

STATEMENT OF FACTS

(Here set out, in numbered paragraphs, the facts on which the application is made)

FLEA(S) IN LAW

(Where appropriate set out the plea(s) in law)

Date (insert date of application)

Signed
(signature of applicant)
for and on behalf of applicant
(insert designation and address)

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

FORM 2

Application for direction under section 3A(2)

Internal Only:
Case Ref:
Date Received:

Application for Direction
Bankruptcy (Scotland) Act 1985 (as amended)
Section 3A

Application by:
(insert name and designation of applicant)

	Name of Applicant
	Address
	Town
	Postcode

In the Bankruptcy of:
(insert name and address of debtor)

	Debtor's full name
	Bankruptcy Reference

The applicant craves the Accountant:
(state here orders sought in respect of application)

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Internal Only:

Case Ref:

Date Received:

STATEMENT OF FACTS

(here set out in numbered paragraphs the facts on which the application is made)

PLEA(S) IN LAW

(here set out the pleas in law)

Date (insert date of application)

Signed

(Signature of applicant)

For Solicitor for Applicant

(insert designation and address)

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

FORM 3

Application for review: general

Internal Only:

Case Ref:

Date Received:

Application for AIB Review
Bankruptcy (Scotland) Act 1985 (as amended)

By submitting this application, you are acknowledging that this document will be shared with all parties involved in the review process.

Bankruptcy reference:

Name of debtor:

Address of debtor:

Name of applicant
requesting review:

Address of applicant:
(This address will be used for correspondence unless otherwise stated)

Association with bankruptcy:
(e.g debtor, creditor, trustee, other)

Section of the Act you are applying for a review under:

Decision to be reviewed:
(Please specify the decision you wish to be reviewed and where possible submit a copy of the decision)

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Internal Only:
Case File
Data Received

Evidence in support of the application:
Please use this section to state the reason you are seeking a review providing as much information as possible:

If required please continue on a separate sheet

Signed:

Date:

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Internal Only:
Case List
Data Received

Official Use Only:

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FORM 4

Report of statutory meeting appointing replacement trustee: section 25(2)(a)

bankruptcy ref

Form of Report to the Accountant in Bankruptcy
Bankruptcy (Scotland) Act 1985 (as amended)
Section 25(2)(a)

Report of the statutory meeting in the bankruptcy of
(debtor's name and address)

- i. (insert trustee name and address), as trustee in the above bankruptcy reports to the Accountant in Bankruptcy that a statutory meeting was called in accordance with the provisions of section 25 of the Bankruptcy (Scotland) Act 1985 (as amended).
 - ii. *The meeting duly took place and no creditor entitled to vote in the election of the trustee attended.
- or
- ii. *The meeting was attended by (insert number of creditors in attendance) creditors or their representatives who were advised of their right to elect a trustee and commissioners, but no trustee was elected.
 - iii. A copy of the record of the meeting and of the trustee's statement of the debtor's affairs are attached.

*delete as appropriate

Signature of trustee _____ Date _____

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

FORM 5

Grant of removal of trustee: section 29(1)(b)

bankruptcy ref



Granting the Removal of Trustee
Bankruptcy (Scotland) Act 1985 (as amended)
Section 29(1)(b)

The Accountant in Bankruptcy, having seen and considered the application under section 29(1A) of the Bankruptcy (Scotland) Act 1985 (as amended) grants same, and in terms of that application Finds and declares that the Trustee is removed and the office of the Trustee in respect of the sequestration of

(Debtor name)
(address)
(town)
(postcode)

awarded by **(The Accountant in Bankruptcy/the Sheriff at (court) Sheriff Court)**
on **(date)** has become vacant.

A meeting of creditors may be held for the election by them of a new trustee.

Issued by The Accountant in Bankruptcy
(dd/mm/yyyy)

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

FORM 6

Conversion of protected trust deed into bankruptcy: section 59A application

(protected trust deed ref)

**Application for Conversion of a Protected Trust Deed
into Bankruptcy**

Bankruptcy (Scotland) Act 1985 (as amended)
Section 59A

Name and address of applicant:
(You must qualify as a Member
State Liquidator)

Name and address of person in the protected
trust deed :

Name and address of Insolvency Practitioner
currently administering the protected trust deed:

*Do you wish to nominate a trustee if the application is converted to bankruptcy?	Yes / No (*please delete as appropriate)
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(If yes, please provide nomination details below. If no trustee nominated, AIB will be appointed as trustee in the bankruptcy)

Trustee Name:

Trustee Address:

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I apply under Article 37 of the EC Regulation of earlier proceedings for the conversion of a protected trust deed into bankruptcy;
I have therefore, enclosed a signed and sworn affidavit in accordance with section 59B of the Act.

I confirm I have served the affidavit upon:
(Please tick the box where appropriate)

(a) the debtor	
(b) the trustee	
(c) all other relevant parties	

Signature of applicant _____ Date _____

Evidence in support of your application

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Continued on next page

Evidence in support of your application (continued)

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

FORM 7

Conversion of protected trust deed into bankruptcy: section 59A award

bankruptcy ref



ACCOUNTANT
IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

Award of bankruptcy
Under Bankruptcy (Scotland) Act 1985 (as amended)
Section 59C

Deliverance awarding bankruptcy of

(Debtor name)
(address)
(town)
(postcode)

with the concurrence of a necessary Member State Liquidator

On **(date)** The Accountant in Bankruptcy has considered the foregoing application together with the productions and being satisfied that the application has been presented in accordance with the Bankruptcy (Scotland) Act 1985 (as amended), converts the estate now belonging or which shall hereafter belong to the debtor from a protected trust deed to bankruptcy.

(Debtor name, address)

before the date of the debtor's discharge and declares the same to belong to the debtor's creditors for the purposes of the said Act and appoints

(trustee name and address)

to be trustee. The whole estate of **(debtor name)** at **(date)** is vested and now belongs to said trustee for the benefit of creditors of **(debtor name)**.

Intimated to the Keeper

Accountant in Bankruptcy

AiB to send forthwith a copy to:

Certified a true copy

The Keeper of the Registers of
Inhibitions and Adjudications
and
The trustee (if not the
Accountant in Bankruptcy)

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedure for the making of applications to, and decisions by, the Accountant in Bankruptcy (“AIB”) under the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) as amended by the Bankruptcy and Debt Advice (Scotland) Act 2014.

They prescribe forms to be used in applying to AIB under the 1985 Act.

Regulations 3 to 7 make provision for general procedure to apply across different applications to AIB under the 1985 Act. They provide for how applications are made to AIB, including service of applications on other parties and the ability for AIB to make inquiries for further evidence or information.

Regulations 8 to 18 make particular procedural provision in relation to specific applications under the 1985 Act—

- section 3A(2) application to AIB for direction by trustee;
- section 17A application for recall where only ground that debtor has paid or is able to pay debts in full;
- section 25(3)(a) objection to statutory meeting appointing a replacement trustee (by persons other than AIB);
- section 28A(7)(a) to determine or appointment or replacement trustee acting in more than one sequestration;
- under section 29(1A)(a) and (6A)(a) removal of trustee from office by AIB;
- under section 42(2A)(b) extension of time limit for contractual powers of trustee;
- under section 56A(3) proposal to make bankruptcy restrictions order;
- under section 56E(3) to annul or vary a bankruptcy restrictions order;
- under section 59A(1) to convert a protected trust deed into sequestration;
- under section 63A a corrective order or to waive a time limit to cure a defect;
- where the Accountant puts a value on a debt under paragraph 3 of Schedule 1 to the Act.

Regulation 19 makes provision for time limits following a reference being made to the sheriff by AIB.

Regulations 20 to 22 provide for additional procedure in review proceedings before AIB. Staff involved in any initial decision of AIB under review must not be involved in review decisions (regulation 21). Review decisions of the AIB must be made public (regulation 22).

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>.