
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 226

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

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⁽¹⁾); 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)⁽²⁾;
- (b) section 25(3)(a) (objection to election of replacement trustee)⁽³⁾;
- (c) section 28A(7)(a) (trustee replacement in more than one sequestration)⁽⁴⁾;
- (d) section 29(1A)(a) (removal of trustee)⁽⁵⁾;
- (e) section 29(6A)(a) (declaration of office of trustee as vacant)⁽⁶⁾;
- (f) section 42(2A)(b) (contractual powers of trustee)⁽⁷⁾;

⁽¹⁾ 2000 c.26.

⁽²⁾ Section 17A is inserted by section 27 of the 2014 Act.

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

⁽⁴⁾ Section 28A is substituted by section 29 of the 2014 Act.

⁽⁵⁾ Section 29(1A) is inserted by section 30(b) of the 2014 Act.

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

⁽⁷⁾ Section 42(2A) is inserted by section 32 of the 2014 Act.

- (g) section 56E(3) (annulment or variation of bankruptcy restrictions order)(8);
 - (h) section 63A(2)(a) (power of Accountant in bankruptcy to cure defects in procedure)(9); and
 - (i) paragraph 3(2)(b) of Schedule 1 (valuing contingent debts)(10).
- (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.

(8) 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.

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

(10) 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.