
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 295

**The Bankruptcy (Applications and
Decisions) (Scotland) Regulations 2016**

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016.

(2) They come into force on 30th November 2016.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Bankruptcy (Scotland) Act 2016;

“the Accountant in Bankruptcy” (or “AiB”) is to be construed in accordance with section 199 of the Act; and

“review application” has the meaning given by regulation 21(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;

(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 AiB.

Dispensing power

3. AiB may relieve any person from the consequences of any failure to comply with a provision of these Regulations that is shown to be due to mistake, oversight or other reasonable cause.

PART 2

Applications: general

Applications

4.—(1) Any application to AiB 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 AiB 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 AiB for that purpose; or
 - (d) by such other means as AiB 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

- 5.—(1) An application to AiB under the following provisions of the Act must be made in writing in Form 1 (application to the Accountant in Bankruptcy: general)—
- (a) section 31(1) (recall of sequestration: where the only ground is that the debtor has paid or is able to pay debts in full);
 - (b) section 60(3)(a) (objection to election of replacement trustee);
 - (c) section 66(7)(a) (trustee replacement in more than one sequestration);
 - (d) section 70(2)(a) (removal of trustee);
 - (e) section 72(3)(a) (declaration of office of trustee as vacant);
 - (f) section 110(4)(b) (contractual powers of trustee);
 - (g) section 159(3) (revocation or variation of bankruptcy restrictions order);
 - (h) section 212(2)(a) (power of Accountant in Bankruptcy to cure defects in procedure); and
 - (i) paragraph 3(3)(b) of schedule 2 (valuing contingent debts).
- (2) Form 1 must also be used (where AiB is the applicant or trustee) for—
- (a) representations under section 66(10) of the Act (trustee replacement in more than one sequestration); and
 - (b) representations under section 212(5) of the Act (curing defect in procedure).

Application procedure: first instance applications to the Accountant in Bankruptcy

- 6.—(1) This regulation applies to any application under the Act for which a form is prescribed by these Regulations (except a review application).
- (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 seek review of or to 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.

(1) 2000 c.26.

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

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

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

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

(8) Where an application is unopposed it must be granted without the attendance of parties, unless AiB 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 4(1)).

(10) Where no time limit for such representations is specified in the Act or these Regulations, the representations must be made within 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 AiB under a provision of the 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 any place of business of the partnership where it appears to the applicant service will be effective;
- (c) in any other case, the last known address of the person.

Inquiries

7.—(1) This regulation applies where in relation to any application required to be on a form under these Regulations (including a review application) or any representation under the Act AiB 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) AiB may before any date set out in the Act for the decision of AiB 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 AiB is extended by the period specified in the notice; and
- (b) if the information or evidence specified is provided to AiB, the period allowed for the decision of AiB 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) 7 days.

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

(5) Where AiB has set any time limit for the giving of written evidence under these Regulations, AiB 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

8.—(1) In respect of an application for which a form is required under these Regulations (other than a review application) AiB may require in writing any person making an application or representations—

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

(2) Paragraph (1) does not apply unless AiB is satisfied there is a good reason to impose such a requirement following written representations, or evidence or information in response to an inquiry.

(3) Paragraph (1) does not authorise AiB 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.

(4) AiB may determine such further procedure in relation to the hearing as AiB considers appropriate.

(5) 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 AiB 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 AiB 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 AiB to attend the hearing or give documents or information under paragraph (1); or
 - (ii) 7 days.

PART 3

Specific applications

Recall of sequestration by Accountant in Bankruptcy

9.—(1) Where the statement of the debtor's affairs is not submitted in accordance with section 32(3)(a) of the Act (recall where the only ground is that the debtor has paid or is able to pay debts in full), the application is not to be considered by AiB until it is submitted.

(2) Where paragraph (1) applies AiB may make inquiries under regulation 7.

(3) AiB must send to the persons listed in section 31(2) of the Act a copy of AiB's decision under section 34(1) or 35(6) of the Act.

(4) AiB must send with any notification under section 35(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: AiB acting as trustee)—

- (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 35(5)(a) of the Act.

(5) Where AiB gives notification under section 35(2) of the Act, AiB must also notify any other interested person, informing the recipient that the person has the right to make representations to AiB in relation to the application within 21 days beginning with the day on which the notice is given.

(6) Where recall is under consideration (including on a review application), and sequestration is recalled by AiB, AiB must at that time consider whether to revoke under section 161(4) of the Act any bankruptcy restrictions order (or interim order) in effect in relation to the debtor.

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

Application for direction by trustee

10.—(1) An application to AiB under section 52(2) of the Act (application for direction) must be made in writing in Form 2.

(2) Where an application is made under that subsection, AiB must before the expiry 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 52(3) of the Act.

Appointment of replacement trustee

11.—(1) A report to AiB under section 60(2)(a) of the Act of a statutory meeting appointing a replacement trustee must be made in writing in Form 4.

(2) If AiB declares an elected person to be trustee under section 60(5) of the Act, AiB must send a copy of the decision to the original trustee and the replacement trustee.

(3) Where AiB gives an opportunity to make representations under section 61(2) of the Act (on receiving an objection), AiB 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 61(2) must be made within 14 days beginning with the date on which the notification was given.

(4) AiB must notify the original and replacement trustees, the objector and any other interested person of any declaration or order under section 61(3) of the Act (and in the case of such an order must do so without delay).

Replacement trustee acting in more than one sequestration

12. A determination or appointment under section 66 of the Act (replacement of trustee acting in more than one sequestration) must be made by AiB within 14 days following the expiry of the period mentioned in section 66(10) of the Act.

Removal of trustee and trustee not acting

13.—(1) An order under section 70(1)(b) of the Act (removal of trustee from office by AiB) must be made in writing in Form 5.

(2) Where the trustee has the opportunity to make representations under section 70(4)(c) of the Act, AiB must allow 21 days beginning with the date on which the copy application was sent under section 70(4)(a) of the Act for those representations.

(3) AiB must within 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 70(1)(b) or (5) of the Act; or

(b) refer the matter to the sheriff under section 71(7)(a) of the Act.

(4) Before making any declaration or order under section 72(1) of the Act, AiB must give the trustee an opportunity to make representations.

(5) In the case of an application under section 72(3)(a) of the Act, AiB must within 14 days beginning after the expiry of the period for representations under regulation 6(10)—

(a) decide whether to make any declaration (or any other order) under section 72(1) of the Act; or

(b) refer the matter to the sheriff under section 71(7)(a) of the Act.

(6) The Accountant must notify the trustee, the debtor, commissioners or any creditor of any order or decision under section 70(1)(b) or (5) or section 72(1) of the Act.

(7) Where a review application is made under sections 71 or 73, AiB must notify any commissioners required to call a meeting under sections 71(6) or 73(1) of the Act.

(8) The requirement to hold that meeting under sections 71(6) or 73(1) 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 sections 71(6) or 73(1) of the Act would have elapsed (ignoring its extension) after the date on which the review application was made; or

(ii) 28 days.

(9) Where a review decision is made under sections 71 or 73 of the Act, AiB must notify any commissioners required to call a meeting under sections 71(6) or 73(1) of the Act.

Contractual powers of trustee

14.—(1) Where an application is made under section 110(4)(b) of the Act (to extend the 28 days for a trustee to adopt or refuse to adopt a contract), AiB must within 14 days beginning with the day on which the application is made—

(a) decide whether to extend the 28 days; or

(b) refer the matter to the sheriff under section 110(8) of the Act.

(2) AiB must notify all interested persons—

(a) of any decision of AiB 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

15.—(1) AiB must allow 14 days beginning with the day on which notice is given under section 155(2) of the Act (proposal to make bankruptcy restrictions order) for representations by the debtor.

(2) Those representations must be made in writing by any means by which an application may be made (see regulation 4(1)).

(3) Notice under section 155(2) informing the debtor under section 155(3) 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) within 14 days beginning with the date on which the notice was given (or in the case of any proposed interim bankruptcy restrictions order, within 2 days beginning with the date on which the notice was given).

(4) AiB must make or decide not to make the bankruptcy restrictions order within 21 days beginning with the date on which the notice was given.

Bankruptcy restrictions orders: revocation or variation

16.—(1) Where an application is made to AiB under section 159(3) of the Act (to revoke or vary a bankruptcy restrictions order), AiB must notify all interested persons that those persons have the right to make representations to AiB in relation to the application within 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 4(1)).

(3) Where following recall of sequestration AiB refuses under section 161(4) of the Act to revoke a bankruptcy restrictions order, AiB must inform the debtor that the debtor has the right to apply to AiB for review of that decision within 14 days beginning with the day on which the award of sequestration was recalled.

Conversion of protected trust deed into bankruptcy

17.—(1) An application to AiB under section 190(1) and (2) of the Act (conversion of protected trust deed into sequestration) must be made in writing in Form 6.

(2) An award under section 192(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 AiB makes, or refuses to make, an order for conversion into sequestration, AiB 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

18. Where AiB makes, or refuses to make, under section 212 of the Act (curing defects in procedure) a corrective order or to waive a time limit, AiB must notify all interested persons.

Debts depending on contingency

19. Where AiB puts a value on a debt under paragraph 3(3) of schedule 2 of the Act (debts depending on a contingency), AiB must notify the creditor and all other interested persons.

PART 4**Reference to court and review by Accountant in Bankruptcy****Reference to court: time limits**

20. Where AiB has applied to refer or remit a matter to the court under the Act—

- (a) if the court (or a court on appeal from that court) makes any disposal which requires AiB to make an order, declaration or decision, the period allowed for the decision of AiB 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) 7 days;
- (b) if the court's disposal has no such requirement, that time limit does not apply.

Review applications

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

- (a) section 27(5) (refusal of sequestration on debtor application);
- (b) section 37(1) (recall: only ground that debtor has paid or is able to pay debts in full);
- (c) section 39(5) (interim preservation);
- (d) section 52(4) (power of direction of trustee);
- (e) section 57(5) (interim trustee termination);
- (f) section 59(1) (Accountant in Bankruptcy interim trustee termination);
- (g) section 61(5) (appointment of replacement trustee);
- (h) section 64(5) (Accountant in Bankruptcy to account for intromissions);
- (i) section 65(4) (discharge of original trustee);
- (j) section 68(1) (trustee replacement in more than one sequestration);
- (k) section 71(1) (removal of trustee);
- (l) section 73(2) (removal - declaring vacancy);
- (m) section 92(1) (debtor contribution order);
- (n) section 97(1) (variation and payment break);
- (o) section 110(5) (contractual powers of trustee);
- (p) section 127(1) (adjudication of claims);
- (q) section 139(1) (discharge);
- (r) section 144(1) (discharge – subsequent contact);
- (s) section 149(1) (discharge of trustee);
- (t) section 151(4) (Accountant in Bankruptcy discharge as trustee);

- (u) section 161(5) (refusal to revoke bankruptcy restrictions order);
 - (v) section 213(1) (curing defects); and
 - (w) paragraph 3(6) of schedule 2 (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 AiB, AiB 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 AiB.
- (4) Those representations must be made in writing by any means by which an application may be made (see regulation 4(1)).
- (5) On making a review decision under the relevant provision of the Act, AiB must notify the persons mentioned in paragraph (3)(a) of AiB'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

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

(2) If the Accountant in Bankruptcy herself or himself was involved in a decision under review, he or she must not be involved in any review decision (and is accordingly unable to exercise those functions in which case the Depute Accountant in Bankruptcy may act in accordance with section 199(2) of the Act).

Review proceedings: persons assisting the Accountant in Bankruptcy

23.—(1) In relation to a review application AiB may take account of the views of any independent person whom AiB appoints for that purpose.

(2) AiB may disclose information held about review applications to persons appointed under paragraph (1) to be used only for the purpose specified in that paragraph.

Review decision

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

PART 5

Revocations and saving

Revocations

25. The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014⁽²⁾ and regulation 3 of the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2015⁽³⁾ are revoked, subject to regulation 26.

Sequestrations and trust deeds before 30th November 2016

26. These Regulations have no effect in relation to—

- (a) sequestrations as regards which the petition was presented or the debtor application was made before; or
- (b) trust deeds executed before,

30th November 2016.

St Andrew's House,
Edinburgh
15th September 2016

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

(2) S.S.I. 2014/226 as amended S.S.I. 2015/80.
(3) S.S.I. 2015/80.