
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 397

The Bankruptcy (Scotland) Regulations 2016

Citation and commencement

1. These Regulations may be cited as the Bankruptcy (Scotland) Regulations 2016 and come into force on 30th November 2016.

Interpretation

2.—(1) In these Regulations—

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

“AiB” means the Accountant in Bankruptcy (with the meaning given by section 199 of the Act);

“Common Financial Statement” means the style and format for income and expenditure categories under that title (and, where relevant, related spread sheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Trust ^{M1};

“common financial tool” has the meaning given by section 89(1) of the Act (see regulations 15 to 17);

“debtor's contribution” has the meaning given by section 89(1) of the Act; and

“the Keeper” means the Keeper of the Registers of Scotland.

(2) Any reference in these Regulations, except regulation 20, to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000 ^{M2}, which has been recorded and is consequently capable of being reproduced.

Marginal Citations

M1 The Money Advice Trust is a company registered in England and Wales with registered number 4741583, registered charity in England and Wales registration number 1099506. Available at www.cfs.moneyadvicetrust.org.

M2 [2000 c.7](#). Section 15(1) was amended by the [Communications Act 2003 \(c.21\)](#), [section 406](#) and schedule 17, paragraph 158.

Forms

3.—(1) The forms set out in schedule 1 are the forms referred to in regulations 8, 12, 19, 20, 23, 24, 27 and 29, failing which they are prescribed for the purposes of the provisions of the Act referred to in the form.

(2) Any signature required as shown on a form set out in schedule 1 must be provided either by—

(a) a manuscript signature; or

(b) except in Forms 19 to 21, an image of a manuscript signature sent electronically.

Status: Point in time view as at 30/11/2016.

Changes to legislation: There are currently no known outstanding effects for the The Bankruptcy (Scotland) Regulations 2016. (See end of Document for details)

PART 1

Money advisers

Approved categories of money advisers

4. Subject to regulation 5, the following classes of persons are prescribed for the purposes of section 4(2)(b) of the Act as money advisers—

- (a) persons who—
 - (i) are qualified to act as insolvency practitioners in accordance with sections 390 of the Insolvency Act 1986^{M3} who are fully authorised, or partially authorised so to act in relation to individuals, within the meaning of 390A of that Act^{M4}; or
 - (ii) work for such an insolvency practitioner, who have been given authority by that insolvency practitioner to act on his or her behalf in providing money advice under the Act; and
- (b) persons who—
 - (i) work as money advisers for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; or
 - (ii) are approved for the purposes of the Debt Arrangement Scheme^{M5}; or
 - (iii) work as money advisers for a citizens advice bureau which is a full member of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland; or
 - (iv) work as money advisers for a local authority.

Marginal Citations

- M3** 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), [schedule 5](#), paragraph 18; the Insolvency Act 2000 (c.39), [schedule 4](#), paragraph 16(2); the Enterprise Act 2002 (c.22), [schedule 21](#), paragraph 4; S.S.I. 2005/465, [schedule 1](#), paragraph 18(3); the Mental Capacity Act 2005 (c.9), schedule 6, paragraph 31(3), [schedule 7](#); the Tribunals, Courts and Enforcement Act 2007 (c.15), [schedule 20](#), paragraph 6; S.I. 2009/1941, [schedule 1](#), paragraph 78(4); the Deregulation Act 2015 (c.20) (“the 2015 Act”), section 17(2) and the Small Business, Enterprise and Employment Act 2015 (c.26), [section 115](#).
- M4** Section 390A was inserted by the 2015 Act, section 17(3).
- M5** Under Part 1 of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#).

Persons who may not be approved money advisers

- 5.—(1) The following persons may not be a money adviser—
- (a) a sheriff officer or messenger-at-arms, or an employee of such a person;
 - (b) a person or body providing financial services, or financial advice other than money advice, in the course of a business or otherwise for profit, or an employee of such a person, unless the person is a—
 - (i) solicitor;
 - (ii) chartered or certified accountant;

- (iii) a credit union registered under the Co-operative and Community Benefit Societies Act 2014 ^{M6} or the Industrial and Provident Societies Act 1965 ^{M7} by virtue of section 1 of the Credit Unions Act 1979 ^{M8};
- (c) a person providing debt collection services, or an employee of such a person;
- (d) a person convicted of an offence involving theft, fraud or other dishonesty;
- (e) a person subject to a bankruptcy restrictions order (including an interim order) under section 155 or 160 of the Act ^{M9} or subject to a bankruptcy restrictions order, or bound by a bankruptcy restrictions undertaking, under schedule 4A of the Insolvency Act 1986 ^{M10};
- (f) a person in respect of whom a court has made a disqualification order under section 1, or who has had a disqualification undertaking accepted under section 1A, of the Company Directors Disqualification Act 1986 ^{M11};
- (g) persons without a licence from the Money Advice Trust ^{M12} to use the Common Financial Statement; or
- (h) persons whose approval is revoked or suspended under paragraph (2).
- (2) AiB may revoke or suspend the approval of a money adviser who fails without good cause—
- (a) to apply the common financial tool in accordance with Part 3; or
- (b) to comply with regulation 7.
- (3) AiB must provide written notice of the revocation or suspension to the money adviser (together with reasons for the decision to revoke or suspend).
- (4) AiB must provide written notice of the revocation or suspension to any debtor where it is known to AiB that the money adviser is acting as money adviser to that debtor.

Marginal Citations

- M6** 2014 c.14.
- M7** 1965 c.12. Section 1 is relevantly amended and repealed subject to savings and transitional provisions by the Co-operative and [Community Benefit Societies Act 2014 \(c.14\)](#).
- M8** 1979 c.34. Section 1 was amended by S.I. 1996/1189, 2001/2617 and 2538 and 2002/1501 and the Co-operative and [Community Benefit Societies Act 2014 \(c.14\)](#), [schedule 4](#), subject to savings and transitional provisions specified in section 151 and schedule 5 of that Act.
- M9** Bankruptcy restrictions undertakings for Scotland were repealed by section 52 of the 2014 Act, subject to transitional arrangements (see [article 4\(4\)](#) of S.S.I. 2014/261, amended by S.S.I. 2015/54).
- M10** 1986 c.45. Schedule 4A was inserted by the [Enterprise Act 2002 \(c.40\)](#), [schedule 20](#), paragraph 1.
- M11** 1986 c.46, amended by the [Insolvency Act 2000 \(c.39\)](#), [sections 5](#) and 6 and schedule 4, paragraph 2; the [Enterprise Act 2002 \(c.40\)](#), [section 204\(3\)](#) and the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#), [schedule 7](#), paragraph 2.
- M12** The Money Advice Trust is a company registered in England and Wales with registered number 4741583, registered charity in England and Wales registration number 1099506.

Other matters on which a debtor must obtain advice

6. The following are prescribed for the purposes of section 4(1)(d) of the Act as matters on which the debtor must obtain advice from a money adviser—
- (a) the income and expenditure of the debtor in accordance with the common financial tool;
- (b) the evidence required to confirm the debts of the debtor in making the debtor application;
- (c) the debt advice and information package ^{M13};

Status: Point in time view as at 30/11/2016.

Changes to legislation: There are currently no known outstanding effects for the The Bankruptcy (Scotland) Regulations 2016. (See end of Document for details)

- (d) the options of a voluntary repayment plan, debt payment programme under the Debt Arrangement Scheme or a trust deed;
- (e) the consequences of sequestration and that an award of sequestration, if granted, is recorded in a public register and may result in one or more of—
 - (i) the debtor being refused credit, or being offered credit at a higher rate, whether before or after the date of the debtor being discharged;
 - (ii) the debtor not being able to remain in his or her current place of residence;
 - (iii) the debtor being required to relinquish property which the debtor owns;
 - (iv) the debtor requiring to make contributions from income for the benefit of creditors;
 - (v) damage to the debtor's business interests and employment prospects;
 - (vi) the debtor still being liable for some debts;
 - (vii) the debtor's past financial transactions being investigated; and
 - (viii) other restrictions or requirements imposed on the debtor as a result of the debtor's own circumstances and actions.

Marginal Citations

M13 Referred to in section 3(2) of the Act and section 10(5) of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#).

Money advice on debtor applications: procedure on evidence and information

7.—(1) In advising under section 4 of the Act on a debtor application, a money adviser must obtain evidence of the debtor's income and expenditure.

(2) A money adviser must retain records in relation to the advice given to the debtor (including the evidence obtained under paragraph (1)) in making a debtor application, for 2 years from the date on which the advice was given.

(3) A money adviser must provide as required by AiB, information about a debtor's application (including evidence obtained under paragraph (1) or the debtor's consent to the application).

Certificate for sequestration: form and manner

8.—(1) A certificate for sequestration granted in accordance with section 9 of the Act must be in Form 2.

(2) The certificate must be signed and dated to the effect provided in that form—

- (a) by the money adviser; and
- (b) by the debtor.

(3) The certificate must be printed on the headed notepaper—

- (a) where the money adviser belongs to an organisation, of the organisation to which the money adviser belongs, or
- (b) in other cases, of the money adviser.

Certificate for sequestration: fee

9. No fee is chargeable for granting a certificate for sequestration.

Certificate for sequestration: prescribed period

10. The time period prescribed for a granted certificate for sequestration for the purposes of section 2(2)(f) or (8)(e)(ii) of the Act is 30 days.

PART 2

Sequestration process

Debt advice and information package

11.—(1) Subject to paragraph (2), the time prescribed for the purposes of section 3(1) of the Act 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) Paragraph (1) (and so the requirement to provide the debtor with a debt advice and information package in that section) does not apply where it is averred that the address of the debtor is not known

M14

Marginal Citations

M14 This regulation re-enacts, with modifications, regulation 7 of the [Bankruptcy \(Scotland\) Regulations 2014 \(S.S.I. 2014/225\)](#) (“the 2014 Regulations”) as amended by [S.S.I. 2015/80](#).

Debtor applications

12.—(1) A debtor application to AiB—

- (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 1;
- (b) in the case of an application by an entity referred to in section 6(1) of the Act, must be in Form 3 accompanied by a statement of assets and liabilities in Form 4.

(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 12.

(3) The Accountant in Bankruptcy or Depute Accountant in Bankruptcy must daily sign a Schedule in Form 7 listing those debtors whose estates have been sequestrated that day, and must enter the Schedule into the register of insolvencies.

(4) AiB 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 AiB refuses to award sequestration, the Accountant in Bankruptcy or Depute Accountant in Bankruptcy must complete and sign a Form 8 in respect of the debtor and without delay send a copy to the applicant, or applicants, in the debtor application.

(6) Where AiB awards sequestration the certified notice of the determination to be sent by AiB to the Keeper for recording in terms of section 26(2) of the Act must be in Form 9 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.

Status: Point in time view as at 30/11/2016.

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(7) A certified notice containing an electronic signature, in a form to be agreed between AiB and the Keeper, of a determination referred to in paragraph (6) may be sent by AiB to the Keeper electronically^{M15}.

Marginal Citations

M15 This regulation re-enacts, with modifications, regulation 5 of the 2014 Regulations.

“Minimal Asset Process” debtors to whom section 2(2) of Act applies: prescribed payments

13.—(1) The payments specified in paragraph (2) are prescribed for the purposes of section 2(2)(a)(ii) of the Act (criteria for sequestration where debtor has minimal assets).

(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^{M16};
- (b) another income-related benefit (as defined in section 191 of the Social Security Administration Act 1992^{M17});
- (c) an income-based jobseeker's allowance, as defined by section 1(4) of the Jobseekers Act 1995^{M18};
- (d) state pension credit under the State Pension Credit Act 2002^{M19};
- (e) child tax credit under the Tax Credits Act 2002^{M20}; or
- (f) an income-related allowance under Part 1 of the Welfare Reform Act 2007^{M21} (employment and support).

Marginal Citations

M16 2012 c.5.

M17 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.

M18 1995 c.18, repealed by Part 1 of Schedule 14 to the [Welfare Reform Act 2012 \(c.5\)](#), subject to saving and transitional provisions.

M19 2002 c.16.

M20 2002 c.21.

M21 2007 c.5.

“Minimal Asset Process” debtors to whom section 2(2) of Act applies: total assets

14. The amount of £2,000 is prescribed for the purposes of paragraph 2(5)(a) of schedule 1 of the Act (total value of debtor's assets after date of debtor application for AiB duty to consider whether paragraph 1 of that schedule should cease to have effect).

PART 3

Debtor's contribution

116 Common financial tool

15.—(1) The specified method to be used to assess the debtor's contribution in accordance with paragraphs (2) to (11) and regulations 16 and 17 (“the common financial tool”) is the Common Financial Statement.

(2) Subject to paragraphs (3) and (7), the debtor's contribution is to be the debtor's whole surplus income (assessed for instance weekly, fortnightly or monthly in accordance with the Common Financial Statement) in excess of the lower of—

- (a) the trigger figures for a reasonable amount of the debtor's expenditure published from time to time as part of the Common Financial Statement; or
- (b) the debtor's expenditure over that period (for each relevant Common Financial Statement category of expenditure).

(3) AiB, the trustee on variation or removal under section 95 of the Act, the court, or the trustee acting under a protected trust deed—

- (a) may allow an amount of expenditure to the debtor which exceeds those trigger figures if satisfied that the expenditure is reasonable; and
- (b) must allow the debtor to decide to retain an additional amount of income in accordance with regulation 16 towards contingencies which may arise.

(4) In determining what is reasonable under paragraph (3)(a), evidence of why the expenditure is reasonable must be provided, or supplied by the debtor on request, to satisfy AiB, the trustee or court with regard to that evidence and any explanation provided.

(5) Insofar as the income and expenditure of any other person may be taken into account in the Common Financial Statement, if either income or expenditure is so taken into account, both the income and the expenditure of that person must be taken into account.

(6) In calculating the debtor's income where she or he is paid regularly by a period other than a week, fortnight or month, the debtor's income shall be the income for that period times such multiplier as converts the period into a year divided by 52, 26 or 12 as the case may be.

(7) If the debtor has income solely from social security benefits and tax credits, no contribution is due.

(8) If the expenditure amount so determined is less than the total amount of any income received by the debtor by way of guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993^{M22}) that income amount shall be allowed instead.

(9) The expenditure amount determined under paragraph (3)(a) must be sufficient to allow for—

- (a) aliment for the debtor;
- (b) any obligation of aliment owed by the debtor (“obligation of aliment” having the same meaning as in the Family Law (Scotland) Act 1985^{M23});
- (c) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner; and
- (d) any obligation of the debtor to pay child support maintenance under the Child Support Act 1991^{M24}.

(10) The amount referred to in paragraph (9)(b) and (c) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.

Status: Point in time view as at 30/11/2016.

Changes to legislation: There are currently no known outstanding effects for the The Bankruptcy (Scotland) Regulations 2016. (See end of Document for details)

(11) Any person applying the common financial tool must have regard to guidance issued by AiB on—

- (a) the treatment of types of income and expenditure under paragraph (3);
- (b) how income and expenditure are to be verified by the money adviser and the trustee; and
- (c) the conduct of money advisers in carrying out their functions under the Act in relation to the common financial tool.

Marginal Citations

M22 1993 c.48.

M23 1985 c.37.

M24 1991 c.48.

Common financial tool: contingency allowance

16.—(1) The amount of income which the debtor may decide to retain towards contingencies under regulation 15(3)(b) is—

- (a) up to 10% of the weekly, fortnightly or monthly (or the equivalent amount for another period) debtor's contribution assessed under regulation 15, before any calculation is made under this regulation for the purposes of regulation 15(3)(b);
- (b) subject to a maximum amount of £4.62 per week, £9.23 per fortnight, £20 per month or the equivalent maximum for such other period, as the case may be.

(2) The amount to be retained under paragraph (1) must be treated as an item of expenditure for the purposes of the relevant form setting out the debtor's expenditure in applying the common financial tool^{M25}.

Marginal Citations

M25 Form 1 in schedule 1; Form 2A in the [Protected Trust Deeds \(Forms\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/398\)](#); and Form 1 of the [Debt Arrangement Scheme \(Scotland\) Regulations 2011 \(S.S.I. 2011/141\)](#), as amended by [S.S.I. 2014/294](#).

Common financial tool: supporting statements and evidence

17.—(1) Any debtor application, initial proposals under section 90(2) of the Act, or application for review or appeal of the debtor's contribution under section 92 or 97 of the Act must contain or be accompanied by a statement—

- (a) that the money adviser or trustee, as the case may be, assessed the debtor's expenditure against the Common Financial Statement; and
- (b) explaining any instance in which those trigger figures are exceeded.

(2) Any such statement setting out expenditure in excess of the trigger figures must be accompanied by evidence of why any expenditure allowed that exceeds the trigger figures is reasonable.

(3) Paragraphs (1) and (2) do not apply to an application for review or appeal mentioned in paragraph (1) by an interested person other than the debtor or the trustee.

(4) Any statement for the purposes of assessment by the common financial tool that there has been a change in the debtor's financial circumstances must be accompanied by evidence that the debtor's circumstances were not as they were when last assessed for those purposes.

Money Advice Trust licence requirements: report

18. Where it appears to AiB that in using the Common Financial Statement to advise on completion of a debtor application a money adviser has contravened a licence requirement imposed by the Money Advice Trust, AiB may notify the Trust of that matter.

Debtor contribution orders

- 19.—(1) A debtor contribution order under section 90(1)(a) of the Act must be in Form 17.
(2) A debtor contribution order under section 90(1)(b) of the Act must be in Form 18.

Deduction from debtor's earnings and other income

20.—(1) This regulation applies where an instruction to make deductions of specified amounts from the debtor's earnings or other income and payments to the trustee of the amounts so deducted is given by a debtor or trustee under section 94(2) or (4) of the Act.

- (2) Except in the case of a subsequent variation under paragraph (7)—
(a) an instruction given by the debtor under section 94(2) must be in Form 19; and
(b) an instruction given by the trustee under section 94(4) must be in Form 20.
(3) On delivery of the instruction and while the instruction is in effect, the—
(a) person by whom the debtor is employed; or
(b) third person required to pay to the trustee money otherwise due to the debtor by way of income (“third person”),

must deduct the sum specified in the instruction on every pay day or day on which a payment is to be made to the debtor, as the case may be, and pay the sum deducted to the trustee as soon as it is reasonably practicable to do so.

(4) Where an employer or third person fails without good cause to make a payment due under an instruction, the employer or third person is—

- (a) liable to pay on demand by a trustee the amount that should have been paid; and
(b) not entitled to recover from a debtor the amount paid to the debtor in breach of the instruction.

(5) An employer or third person may on making a payment due under an instruction charge a fee equivalent to the fee chargeable for the time being under section 71 of the Debtors (Scotland) Act 1987^{M26} (employer's fee for operating diligence against earnings) and deduct that fee from the balance due to the debtor.

(6) The trustee must, without delay after the end of the payment period for the debtor under section 91 of the Act, notify in writing any person who has received an instruction in accordance with paragraph (2) (or varied in accordance with paragraph (7)) that the instruction has been recalled.

(7) Following any change to the debtor's contribution, the debtor or trustee may give a variation instruction under section 94(2) or (4) of the Act in accordance with that change to the instruction mentioned in paragraph (2) in Form 21 to the employer or third person.

Marginal Citations

M26 1987 c.18. A sum was specified in S.S.I. 2006/116.

Status: Point in time view as at 30/11/2016.

*Changes to legislation: There are currently no known outstanding effects for the
The Bankruptcy (Scotland) Regulations 2016. (See end of Document for details)*

PART 4

Administration of sequestration

Claims in foreign currency

21. A creditor may state the amount of that creditor's claim in a foreign currency for the purposes of section 46(6) or 125(1) of the Act—

- (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^{M27}.

Marginal Citations

M27 This regulation re-enacts, with modifications, regulation 10 of the 2014 Regulations.

Conversion of foreign currency claims

22. For the purposes of sections 48(1)(a) and 126(5) of the Act, the manner of conversion into sterling of the amount of a claim stated in foreign currency is to be at a single exchange rate for that currency determined by the trustee with reference to the exchange rates prevailing at the close of business on the date of sequestration^{M28}.

Marginal Citations

M28 This regulation re-enacts, with modifications, regulation 11 of the 2014 Regulations.

Trustee resignation application

23. An application under section 69(1) of the Act by a trustee for authority to resign must be in Form 14^{M29}.

Marginal Citations

M29 This regulation re-enacts regulation 12 of the 2014 Regulations.

Abandonment of heritable property by trustee

24.—(1) Where a trustee in sequestration has abandoned to the debtor any heritable property, notice of abandonment for the purposes of section 87(8) of the Act must be—

- (a) where the trustee is not AiB, in Form 15; or
- (b) where AiB is the trustee, in Form 16.

(2) Where AiB records a certified copy notice of abandonment under section 87(9) of the Act, it may be sent electronically to the Keeper containing an electronic signature in a form to be agreed between AiB and the Keeper.

(3) The Accountant in Bankruptcy, Depute Accountant in Bankruptcy or any other person authorised by the Accountant in Bankruptcy must certify such a copy on behalf of AiB ^{M30}.

Marginal Citations

M30 This regulation re-enacts regulation 13 of the 2014 Regulations.

Financial education

25. The course of financial education prescribed for the purposes of section 117(1) of the Act is—

- (a) the Scottish Financial Education Module learning materials divided into sections and published under that title by Money Advice Scotland ^{M31}; 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.

Marginal Citations

M31 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

26. The prescribed rate of interest for the purposes of section 129(10)(a) of the 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 ^{M32}.

Marginal Citations

M32 This regulation re-enacts regulation 18 of the 2014 Regulations.

Certificate of deferral of debtor's discharge

27. A certificate deferring indefinitely the discharge of the debtor under section 141(4)(b) or (6) of the Act (where the debtor cannot be traced) must be in Form 30 ^{M33}.

Status: Point in time view as at 30/11/2016.

*Changes to legislation: There are currently no known outstanding effects for the
The Bankruptcy (Scotland) Regulations 2016. (See end of Document for details)*

Marginal Citations

M33 This regulation re-enacts regulation 19 of the 2014 Regulations.

Premium of bond of caution

28. 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 acting 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^{M34}.

Marginal Citations

M34 This regulation re-enacts regulation 20 of the 2014 Regulations.

PART 5

Moratorium on diligence

Moratorium on diligence: notice of intention to apply

29.—(1) A notice given by a person for the purposes of section 195(1) of the Act (notice of intention to make debtor application, protect trust deed or apply to the Debt Arrangement Scheme) must be in Form 33.

(2) A notice given by a person for the purposes of section 196(1) of the Act (notice of intention to apply: sequestration of estate under section 6) must be in Form 34.

PART 6

Register of Insolvencies

Register of Insolvencies

30.—(1) The register of insolvencies maintained by AiB under section 200(1)(c) of the Act is to be in the form specified in schedule 2.

(2) Information need not be included in the register of insolvencies where AiB is of the opinion that inclusion of the information would be likely to put any person at risk of violence or otherwise jeopardise the safety or welfare of any person.

PART 7

Limited partnerships

Application of Bankruptcy (Scotland) Act 2016 to limited partnerships

31.—(1) The application of the 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 Act or in legislation made under it (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 15 of the Act (jurisdiction) to limited partnerships—

(a) AiB 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 26(1), 27(11) and 30(9) of the Act, the sheriff clerk must send a copy of every court order mentioned in those sections to the Registrar of Limited Partnerships in Scotland.

(5) In the case of a debtor application by a limited partnership, AiB must send a copy of the determination to the Registrar of Limited Partnerships in Scotland^{M35}.

Marginal Citations

M35 This regulation re-enacts regulation 8 of the 2014 Regulations.

PART 8

Revocations and sequestrations and trust deeds before 30th November 2016

Revocations

32. The Regulations specified in schedule 3 are revoked to the extent mentioned in the second column of that schedule, subject to regulation 33.

Sequestrations and trust deeds before 30th November 2016

33. 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.

Moratorium on diligence: notice of intention to apply under Bankruptcy (Scotland) Act 2016

34. For the avoidance of doubt, notice given under section 4A or 4B of the Bankruptcy (Scotland) Act 1985 before 30th November 2016 is treated as validly given after that date notwithstanding that it refers to an application for sequestration under the Bankruptcy (Scotland) Act 2016 rather than under that Act of 1985.

St Andrew's House,
Edinburgh
24th November 2016

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

Status:

Point in time view as at 30/11/2016.

Changes to legislation:

There are currently no known outstanding effects for the The Bankruptcy (Scotland) Regulations 2016.