

POLICY NOTE

THE BANKRUPTCY (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/48

1. The above instrument was made in exercise of the power conferred by section 129(10)(a) of the Bankruptcy (Scotland) Act 2016 (the “2016 Act”). The instrument is subject to the negative procedure and it comes into force on 6 April 2024.

Summary Box

Purpose of the instrument. The instrument amends the Bankruptcy (Scotland) Regulations 2016 (S.S.I. 2016/397) (the “2016 Regulations”) which prescribe the rate of interest payable on creditors’ claims in bankruptcy (sequestration) under section 129(10)(a) of the 2016 Act, where there are sufficient funds to settle those claims in full.

It amends the methodology for calculation of the rate of interest to reflect the prevailing rates of interest more accurately at the date of sequestration by linking it to the Bank of England base rate.

Policy Objectives

2. This instrument amends regulation 26 of the 2016 Regulations, which sets the prescribed rate of interest payable on creditors’ claims in bankruptcy cases under section 129(10)(a) of the 2016 Act, where there are sufficient funds available to pay creditors’ claims in full. Trustee discharge reports indicate that between 1 November 2018 and 31 October 2023, only 5.5% of cases paid all creditors’ claims in full plus interest.

3. This interest is payable for the period from the date of sequestration until the creditors’ claims are paid.

4. Section 129(10) of the 2016 Act specifies that the rate of interest payable is the greater of:

- a. the prescribed rate at the date of sequestration, and
- b. the rate applicable to that debt apart from the sequestration.

5. At present the prescribed rate of interest is a fixed percentage of 8% per annum. It does not accurately reflect the prevailing rates of interest at the date of sequestration and is therefore considered too high.

6. The rate applicable to a debt apart from the sequestration (the contractual rate) is the rate of interest agreed between the parties when entering into a contractual transaction before the sequestration. This rate can vary significantly between contracts depending on the specific circumstances and is a private arrangement between the contracting parties.

7. This instrument will amend the mechanism for calculation of the prescribed rate of interest from a fixed percentage to a rate more closely aligned to the prevailing rate of interest at the date of sequestration. It will be based on the Bank of England base rate at the date of

sequestration with an additional 2% to compensate creditors for delays in recovering sums due to them.

8. Creditors will continue to be entitled to interest at their contractual rate if this is greater than the prescribed rate.

EU Alignment Consideration

9. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

10. Having considered the recommendations of a stakeholder-led working group formed at Stage 2 of a wider, 3-stage review of Scotland's statutory debt solutions and the recommendations of a separate working group on diligence, the Scottish Government responded by developing proposals which were published for public consultation in August 2022. A [summary of responses](#) to this consultation was published by the Scottish Government on 26 January 2023.

11. Included within this consultation was the proposal to "Reform the basis for the prescribed rate of statutory interest and link this to the Bank of England base rate plus 2% - fixed at the date of bankruptcy".

- 89% of respondents to the consultation answered this particular question.
- 66% of those respondents agreed with the proposal, 17% disagreed and 17% neither agreed nor disagreed.

Impact Assessments

12. A business and regulatory impact assessment has been completed on the draft SSI and is available on [Legislation.gov.uk](#)

13. No equality issues were raised as part of the consultation process and it is considered that a full Equality Impact Assessment is not required. The change applies to all who are in a bankruptcy process, where there are sufficient funds to pay their creditors in full, irrespective of protected characteristics and is introduced to have a rate of interest which more accurately reflects the prevailing rates of interest at the date of sequestration.

14. The impact of these proposals on children's human rights and wellbeing were considered and no impacts were identified. Also no impacts were raised as part of the consultation process. It was considered therefore that a Child Rights and Wellbeing Impact Assessment is not required.

15. In view of the Fairer Scotland Duty regarding socio-economic inequalities which exists under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered. There were no significant impacts on socio-economic inequalities identified and therefore a Fairer Scotland Duty Impact Assessment is not required.

Financial Effects

16. The changes introduced by this instrument will not result in costs to the Scottish Government or have any significant financial impacts on Scottish businesses. Any interest ingathered as part of the bankruptcy process is passed from the trustee to creditors, in the same way that other funds ingathered are dealt with.

17. Changing the interest rate where there are sufficient funds in a case alters the balance of the amount paid to the creditors and the residual estate which may be repayable to the person subject to bankruptcy. In recent years if the prescribed rate of interest had been linked to the Bank of England base rate as opposed to a fixed 8% per annum there may have been a greater reversion to the individual in those cases where the funds held in the case were sufficient to pay creditors' claims in full plus interest from the date of sequestration to the date of payment of claims.

Accountant in Bankruptcy
February 2024