SCOTTISH STATUTORY INSTRUMENTS

2014 No. 227

INSOLVENCY

BANKRUPTCY

The Bankruptcy Fees (Scotland) Regulations 2014

Made - - - -	*20th August 2014*
Laid before the Scottish Parliament	*21st August 2014*
Coming into force - -	*1st April 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 69A and 72(1A) of the Bankruptcy (Scotland) Act 1985(**a**) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Bankruptcy Fees (Scotland) Regulations 2014.

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

Interpretation

2. In these Regulations—

"the 1985 Act" means the Bankruptcy (Scotland) Act 1985;

"bankruptcy restrictions order" means an order made under section 56A of the 1985 Act(**b**);

"debtor who has few assets" means a debtor to whom section 5(2ZA) of the 1985 Act(**c**) applies;

"debtor's contribution" has the meaning given by section 5D(1) of the 1985 Act(**d**);

"expenses of realisation" means any outlays incurred by the trustee in realising the debtor's estate which in the course of normal business practice are deducted from the price payable to the trustee;

(**a**) 1985 c.66 ("the 1985 Act"). Section 69A of the 1985 Act was inserted by section 8 of the Bankruptcy (Scotland) Act 1993 (c.6) ("the 1993 Act"). Section 72(1A) is inserted by paragraph 34(a) of schedule 3 to the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) ("the 2014 Act"). 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 1985 Act was significantly amended by sections 1 to 8 of and Schedule 1 to the 1993 Act, by Part 1 (except for sections 3, 4, 33 and 34) of and schedule 1, schedule 5, paragraph 13 and schedule 6, Part 1 to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ("the 2007 Act"), by article 8 of S.S.I. 2008/82 and by the 2014 Act.

(**b**) Section 56A was inserted by section 2(1) of the 2007 Act.

(**c**) Section 5(2ZA) is inserted by section 5(1)(b) of the 2014 Act (sequestrations where the debtor has few assets; the "minimal asset process" (MAP)).

(**d**) Section 5D is inserted by section 3(1) of the 2014 Act.

"member State liquidator" has the meaning given by section 73(1) of the 1985 Act(**a**);

"table of fees" means the Table of Fees in the Schedule;

"statutory fee" means any fee payable under an enactment;

"the statutory meeting" has the meaning given by section 20A of the 1985 Act(**b**);

"trading expenses" means any outlays incurred by the trustee in the carrying on of any business of the debtor;

"trust deed", where granted before 1st April 1993, means a voluntary trust deed granted by or on behalf of a debtor, whereby the debtor's estate is conveyed to the trustee for the benefit of the creditors of that debtor generally and, where granted on or after that date, has the meaning assigned by section 5(4A) of the 1985 Act(**c**); and

"trustee vote" is to be construed in accordance with section 24(1) of the 1985 Act(**d**).

Fees and outlays as interim trustee or trustee

3. The fees payable to the Accountant in Bankruptcy in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration, which are specified in column 1 of Part 1 of the table of fees are the fees specified in relation to those functions in column 2 of the table of fees.

4. The outlays payable to the Accountant in Bankruptcy in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration are those outlays actually, necessarily and reasonably incurred in respect of the exercise of any of those functions and include, but are not limited to, outlays so incurred in respect of—

(a) the making of searches in any public register;

(b) the valuation of property;

(c) legal services and related expenses;

(d) estate agency services;

(e) the services of auctioneers and valuers;

(f) services related to taxation matters; and

(g) travel and subsistence expenses.

5. Any fees and outlays payable to the Accountant in Bankruptcy in respect of the exercise by, or on behalf of, that office of its functions as interim trustee or trustee in a sequestration are due for payment from the sequestrated estate where—

(a) the Accountant in Bankruptcy has made a determination of its fees and outlays calculated in accordance with these Regulations, under and in accordance with, as appropriate, one of these provisions of the 1985 Act—

(i) section 26A(3)(b)(**e**) (determination of fees and outlays where Accountant in Bankruptcy was interim trustee and some other person becomes trustee);

(ii) section 53(1), as modified by section 53A(2)(**f**) (determination of fees and outlays at end of each accounting period where Accountant in Bankruptcy is trustee);

(**a**) The definition of "member State liquidator" was inserted by regulation 19 of the Insolvency (Scotland) Regulations S.S.I. 2003/2109.

(**b**) Section 20A was inserted by paragraph 9 of Schedule 1 to the 1993 Act and amended by paragraph 1 of schedule 6(1) to the 2007 Act.

(**c**) Section 5(4A) was inserted by section 3(4) of the 1993 Act. Section 5(4A)(a) is amended by schedule 3, paragraph 4(b) of the 2014 Act.

(**d**) Section 24(1) was amended by section 11(4)(a) of the 2007 Act.

(**e**) Section 26A was inserted by paragraph 15(1) of Schedule 1 to the 1993 Act.

(**f**) Section 53A was inserted by paragraph 46 of schedule 1 to the 2007 Act.

(iii) section 58A(4)(a)(**a**) (determination of fees and outlays on discharge of Accountant in Bankruptcy as trustee); and

(b) the period within which an appeal against such a determination may be taken to the sheriff has expired or, if an appeal is so taken, that appeal has been determined, under, as appropriate, one of these provisions of the 1985 Act—

(i) section 26A(5) and (6)(**b**);

(ii) section 53(4), as modified by section 53A(2);

(iii) section 58A(5) and (6)(**c**).

Other fees

6. The fees payable to the Accountant in Bankruptcy in respect of the exercise of that office's functions, other than as interim trustee or trustee in a sequestration, specified in column 1 of Part 2 of the table of fees are the fees specified in relation to those functions in column 2 of the table of fees.

7. A fee payable under regulation 6 is payable even although it is payable by or on behalf of the Accountant in Bankruptcy in the exercise of that office's functions as interim trustee or trustee in a sequestration.

Manner of payment

8. A fee payable to the Accountant in Bankruptcy for a function specified in Part 2 of the table of fees is due for payment—

(a) on the application for these services being made to the Accountant in Bankruptcy, in respect of—

(i) item 14 (removal of trustee and trustee not acting);

(ii) item 15 (declaration of office of trustee as vacant);

(iii) item 16 (replacement of trustee acting in more than one sequestration);

(iv) item 17 (appointment or reappointment of trustee where newly identified estate);

(v) item 18 (application by trustee for a direction);

(vi) item 19 (curing defects in procedure);

(vii) item 21 (conversion of trust deed into sequestration);

(b) in respect of the functions specified in item 2 (supervision of sequestration proceedings)—

(i) at the end of each 12 month period of supervision; or

(ii) if the trustee is discharged during a 12 month period, in advance of the granting of a certificate of discharge under section 57(3)(**d**) of the 1985 Act;

(c) in respect of the functions specified in item 8(c) (protected trust deed supervision)—

(i) at the end of each 12 month period of supervision; or

(ii) if the trustee is discharged during a 12 month period, in advance of the date of discharge of the trustee under regulation 25 of the Protected Trust Deeds (Scotland) Regulations 2013(**e**);

(**a**) Section 58A was inserted by paragraph 26 of Schedule 1 to the 1993 Act. Section 58A(4)(a) is amended by paragraph 32 of schedule 3 to the 2014 Act.
(**b**) Section 26A(5) and (6) is amended by section 40(1)(c) and (d) of the 2014 Act.
(**c**) Section 58A(5) and (6) is amended by section 42(2)(c) and (d) of the 2014 Act.
(**d**) Section 57(3)(b) was amended by paragraph 1 of schedule 6(1) to the 2007 Act.
(**e**) S.S.I. 2013/318.

(d) in respect of the functions specified in item 12 (election of replacement trustee by trustee vote), on the submission of the relevant report to the Accountant in Bankruptcy;

(e) in respect of the functions specified in item 22 (determination of debtor applications)—

(i) on the application being made to the Accountant in Bankruptcy; and

(ii) if paragraph 1 of Schedule A1 to the 1985 Act(**a**) ceases to apply to the debtor, on receiving a request from the Accountant in Bankruptcy for the fee due under item 22(b) taking account of the fee already paid under item 22(a);

(f) in respect of any other such function, on performance by the Accountant in Bankruptcy of that function.

9. A fee payable to the Accountant in Bankruptcy in respect of the functions specified in item 22 (determination of debtor applications) of Part 2 of the table of fees is payable whether or not it is subsequently determined in favour of the applicant.

10. A fee payable to the Accountant in Bankruptcy in respect of a function specified in Part 2 of the table of fees by an interim trustee, trustee in a sequestration or trustee under a protected trust deed is payable by the trustee whether or not there are subsequently funds available for distribution from the debtor's estate to meet that fee.

Waiver of fees not permissible

11.—(1) Subject to paragraphs (2) and (3), the fees in Part 2 of the table of fees payable to the Accountant in Bankruptcy may not be waived by the Accountant in Bankruptcy in whole or in part.

(2) For the purposes of regulation 8(c)(ii), the Accountant in Bankruptcy may waive the balance due, if the debtor who granted the protected trust deed failed to meet the debtor's obligations for the purposes of regulation 24(2)(a) of the Protected Trust Deeds (Scotland) Regulations 2013.

(3) For the purposes of regulation 8(e)(ii), the Accountant in Bankruptcy may waive the balance due, unless the debtor provided false or misleading information in the debtor application.

Repayment of fees - refusal of bankruptcy restrictions order

12.—(1) Where the Accountant in Bankruptcy or a sheriff does not grant an application for a bankruptcy restrictions order under section 56A(1) of the 1985 Act, the Accountant in Bankruptcy or the sheriff may hold that in the circumstances of the case it was not reasonable to make the application.

(2) In that event, any fee charged by the Accountant in Bankruptcy under item 23 of Part 2 of the table of fees must be repaid.

Sequestrations and trust deeds before 1st April 2015

13.—(1) Except as mentioned in paragraph (4), nothing in these Regulations has effect as regards any sequestration in respect of which—

(a) the petition is presented before 1st April 2015; or

(b) a debtor application was made before that date.

(2) Except as mentioned in paragraph (4), nothing in these Regulations has effect as regards any trust deed which was granted before 1st April 2015.

(3) The Bankruptcy Fees etc. (Scotland) Regulations 2012(**b**), continue to apply and have effect in relation to any such sequestration or trust deed.

(**a**) Schedule A1 is inserted by section 5(2) of and schedule 1 to the 2014 Act ("minimal asset process" (MAP) cases considered under section 5(2ZA) of the 1985 Act).

(**b**) S.S.I. 2012/118, as amended by S.S.I. 2013/318.

(4) This Regulation does not apply in respect of items 18, 20 and 21 in Part 2 of the table of fees.

Revocation of Bankruptcy Fees etc. (Scotland) Regulations 2012

14. The Bankruptcy Fees etc. (Scotland) Regulations 2012 are revoked (subject to regulation 13).

FERGUS EWING
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th August 2014

SCHEDULE

Regulations 3 and 6

TABLE OF FEES

PART 1

Fees for Accountant in Bankruptcy as interim trustee or trustee in sequestration

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Former Rates)*
1. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as interim trustee in a sequestration where the Accountant in Bankruptcy is not appointed as trustee in that sequestration.	£200.00	£100 per hour for each hour of work done
2. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as interim trustee or trustee in a sequestration, other than in respect of— (a) the realisation of assets in the sequestrated estate; (b) ingathering debtor's contributions; and (c) payment of dividends to creditors.	£1,100.00	£100 per hour for each hour of work done
3. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as trustee in a sequestration in relation to the realisation of assets in the sequestrated estate—		
(a) in respect of the total price paid in a transaction by the purchaser of heritable property, including any interest paid thereon, but after the deduction of any sums paid to secured creditors in respect of their securities over that property—		
(i) on the first £10,000 or fraction of that sum;	15% of that amount	*(No change)*
(ii) on the next £10,000 or fraction of that sum;	5% of that amount	*(No change)*
(iii) on all further sums;	2% of that amount	*(No change)*
(b) in respect of the proceeds of the sale of moveable property, after the deduction of the expenses of sale and any sums paid to secured creditors in respect of their securities over that property—		
(i) on the first £10,000 or fraction of that sum;	15% of that amount	*(No change)*
(ii) on the next £10,000 or fraction of that sum;	5% of that amount	*(No change)*

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Former Rates)*
(iii) on all further sums;	2% of that amount	*(No change)*
4. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as interim trustee or trustee in a sequestration in ingathering debtor's contributions.	25% of funds ingathered	*(No change to fee; function formerly in respect of ingathering debtor's estate)*
5. In respect of the exercise by the Accountant in Bankruptcy of that office's functions as trustee in relation to the payment of dividends to creditors—		
(a) on the first £10,000 or fraction of that sum;	10% of that amount	*(No change)*
(b) on the next £10,000 or fraction of that sum;	5% of that amount	*(No change)*
(c) on all further sums.	1% of that amount	2% of that amount

PART 2

Fees for other functions of the Accountant in Bankruptcy

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Fee Formerly Payable)*
1. For administration of—		
(a) any petition by a creditor or trustee under a protected trust deed;	£100.00	*(No change to fee, but petition by executor of a deceased debtor is now administered by debtor application – see item 22(b))*
(b) any such petition where following award of sequestration the Accountant in Bankruptcy is the trustee.	£200.00	*(No change)*
2. For supervising proceedings in sequestration—		
(a) where commissioners have been elected;	(a) £70.00 per 12 month period of supervision beginning on the date of	Where applicable— (a) £139.00 for supervising proceedings;

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Fee Formerly Payable)*
	appointment of the trustee and ending on discharge of the trustee (or part of such period) for the first 12 month period (or part of such period); and (b) thereafter £50.00 per 12 month period of supervision throughout which commissioners are in post (or part of such period).	(b) £20.00 for registering award of sequestration; (c) £69.00 for any special report to the court; (d) £36.00 for examination of the sederunt book and related work, in connection with the discharge of a trustee; (e) £36.00 for granting a certificate of discharge to an interim trustee.
(b) where no commissioners have been elected;	£70.00 per 12 month period of supervision beginning on the date of appointment of the trustee and ending on discharge of the trustee (or part of such period).	Where applicable— (a) £210.00 for supervision of trustee; (b) £20.00 for registering award of sequestration; (c) £69.00 for supervising payment of dividend to creditors where no commissioners have been elected; (d) £69.00 for any special report to court; (e) £36.00 for examination of the sederunt book and related work, in connection with the discharge of a trustee;

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Fee Formerly Payable)*
		(f) £36.00 for granting a certificate of discharge to an interim trustee.
3. For considering and issuing a determination in an appeal against a determination of commissioners as to the outlays and remuneration payable to a trustee.	5% of the sum remaining on deduction from the sum of outlays and remuneration determined by the Accountant in Bankruptcy of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	*(No change)*
4. For issuing a determination fixing the outlays and remuneration payable to— (a) an interim trustee; or (b) a trustee.	17.5% of the sum remaining on deduction from the sum of outlays and remuneration determined of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	*(No change)*
5. For attendance at any meeting of creditors – fee per hour or part thereof, including travelling time.	£69.00	*(No change)*
6. For calling any meeting of creditors.	£36.00	*(No change)*
7. For attendance at any examination of the debtor – fee per hour or part thereof, including travelling time.	£69.00	*(No change)*
8. In respect of protected trust deeds—		
(a) for publishing a notice in the register of insolvencies where—		
(i) the notice is sent by the trustee using the electronic service provided by the Accountant in Bankruptcy;	£35.00	*(No change)*
(ii) the notice is sent by the trustee by any other method;	£90.00	*(No change)*
(b) for registering a protected trust deed(**a**);	£36.00	*(No change)*

(**a**) Under regulation 11(2) of the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318).

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Fee Formerly Payable)*
(c) for supervision of a trustee under a protected trust deed.	£100.00 per 12 month period of supervision beginning on the date of registration of the protected trust deed and ending on the discharge of the trustee (or part of such period).	*(No change)*
9. For auditing the accounts of a trustee under a protected trust deed and fixing the trustee's remuneration.	5% of the sum remaining on deduction from the sum of outlays and remuneration determined of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	*(No change)*
10. For lodging any unclaimed dividend in an appropriate bank or institution set aside for payment to a creditor or creditors, in respect of each creditor on consignation.	£26.00	*(No change)*
11. For uplifting any unclaimed dividend consigned in an appropriate bank or institution, in respect of each creditor.	£26.00	*(No change)*
12. For receiving a report of proceedings at the statutory meeting to elect a replacement trustee, other than following the death of a trustee acting in only one sequestration.	£50.00	None
13. For appointing a replacement trustee where the original trustee has resigned and no new trustee is elected by trustee vote.	£50.00	None
14. For considering and making an order in relation to an application for removal of a trustee by commissioners or a person representing at least one quarter in value of the creditors.	£50.00	None
15. For considering and making a declaration and any necessary order in relation to an application for declaration of the office of trustee as vacant by commissioners, a debtor or a creditor.	£50.00	None

Column 1 *(Functions)*	*Column 2* *(Fee Payable)*	*Column 3* *(Fee Formerly Payable)*
16. For making a determination or appointment on receipt of an application by a person with an interest for the replacement of a trustee acting in more than one sequestration.	£50.00	None
17. For appointing a trustee where newly identified estate is discovered after the trustee's discharge, on receipt of an application by the trustee who was discharged.	£50.00	None
18. For giving a direction on receipt of an application by a trustee in relation to a particular matter arising in the sequestration.	£50.00	None
19. For issuing an order curing defects in procedure on receipt of an application by any person having an interest.	£50.00	None
20. For determination of an application for recall of sequestration (except on direction of a sheriff).	£100.00	None
21. For considering and making any order in relation to an application by a member State liquidator for conversion of a trust deed into sequestration.	£50.00	None
22. For determination of a debtor application in relation to—		
(a) a debtor who has few assets(**a**);	£90.00	£200
(b) any other debtor.	£200.00	*(No change to fee, but fee now applicable to executor of deceased debtor)*
23. For an application to the court or the Accountant in Bankruptcy for a bankruptcy restrictions order.	£250.00	*(No change)*
24. For registering a court order appointing a replacement trustee.	£19.00	*(No change)*

(**a**) "Minimal asset process" (MAP) cases considered under section 5(2ZA) of the 1985 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the fees and outlays payable to the Accountant in Bankruptcy in respect of the exercise of that office's functions under the Bankruptcy (Scotland) Act 1985 ("the 1985 Act"). They also prescribe when and in what manner certain fees and outlays are due for payment.

They revoke and replace the Bankruptcy Fees etc. (Scotland) Regulations 2012 ("the 2012 Regulations"), subject to a saving in regulation 13 for petitions and applications for sequestration lodged or trust deeds granted before 1st April 2015. They are made following the amendment of the 1985 Act by the Bankruptcy and Debt Advice (Scotland) Act 2014, including in relation to functions transferred from the court to the Accountant in Bankruptcy.

The fees formerly payable under the 2012 Regulations are shown in column 3 of the Table of Fees in the Schedule to these Regulations ("table of fees"); where there is no change this is expressly stated. In some cases, the fees may be met as expenses in the distribution of the estate of the debtor (see section 51 of the 1985 Act).

The fees set by Part 1 of the table of fees relate to the exercise of the Accountant in Bankruptcy's functions of acting as interim trustee and trustee in sequestration (regulations 3 to 5). The fees set by Part 2 of the table of fees relate to other functions of the Accountant in Bankruptcy (regulations 6 to 12).

A Business and Regulatory Impact Assessment has been prepared for these Regulations and can be obtained from the Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning.

© Crown copyright 2014

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£6.00

S2014082111 08/2014 19585

http://www.legislation.gov.uk/id/ssi/2014/227

ISBN 978-0-11-102429-4

9 780111 024294