

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

Scottish Ministers have laid The Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014 before the Scottish Parliament. The Regulations set out the procedure for the making of applications to, and decisions by, the Accountant in Bankruptcy (“AiB”) under the Bankruptcy (Scotland) Act 1985 (“the Act”) as amended by the Bankruptcy and Debt Advice (Scotland) Act 2014 (‘BADAS Act’) and will come into effect on 1 April 2015.

General provisions

The Regulations provide various forms which must be used in making applications to the AiB. Applications must be submitted to the AiB by personal delivery, registered post or other recorded delivery service, e-mail or using the AiB computer system, or such other means as the AiB agrees to. The application must specify the name of the applicant and details of their representative (where applicable).

When making the application the applicant must send a copy of the application to the ‘proper address’ of those specified in the Act who is required to be notified, is able to make representations or able to review or appeal a decision of the application, as well as any other interested person. ‘Proper address’ is the last known address of that person, the registered or principal office of a body corporate or the principal office of a partnership. The applicant is also required to inform the recipient in writing that they have the right to make representations to the AiB and the timescale under which these representations must be made.

The AiB may require further information or evidence be provided or require a person to attend a hearing prior to issuing any decision. The AiB may refuse to consider an application where she considers that insufficient information or evidence has been provided after a request for this to be provided and must not consider any written evidence given out with the time limits unless there is good reason to do so. In attending any hearing or providing further evidence a person is not required to answer anything or 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. Where further evidence or information is requested by the AiB the time limits set out in the Act for a decision are extended by the period allowed for the provision of such information.

Specific applications

The Regulations also set out specific provisions in relation to the process and timescales in relation to applications for:

- Direction by a trustee
- Recall of sequestration
- Appointment of replacement trustee
- Replacement trustee acting in more than one sequestration
- Removal of a trustee and trustee not acting
- Contractual powers of trustee
- Bankruptcy restriction orders
- Conversion of a protected trust deed into bankruptcy by a member state liquidator
- Power to cure defects
- Valuation of debts depending upon a contingency

Reference to sheriff and AiB Reviews

Where the AiB has referred a matter to a sheriff, where the sheriff disposes of the referral and requires the AiB to make an order, declaration or decision then the AiB must do so within the greater

of the remaining time period set out in the Act excluding the time taken for the sheriff to consider the referral or 7 days.

Any application for a review of an AiB decision must be using Form 3. A period of 21 days is permitted for any person notified of the review application to make representations. The Regulations provide that no member of staff of the AiB who was involved in the decision under review may be involved in the review decision and that if the Accountant in Bankruptcy was involved in the decision under review then any functions that could be exercised by the Accountant in the review may be exercised by the Depute Accountant. All decisions and a statement of reasons, following a review will be made publically available.

[The Bankruptcy \(Applications and Decisions\) \(Scotland\) Regulations 2014](#)

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Specific applications

- Application for direction by trustee
 - Must be applied for using Form 2 and the direction must be given or referred to the sheriff within 28 days
- Recall of sequestration by the AiB
 - The AiB is not to consider any application for recall until the trustee submits their statement relating to the debtors affairs dealing with arrangements for settlement of the debts, but may in the intervening period make enquiries or require further evidence to be provided.
 - Where a BRO (including interim order) is in effect in relation to the debtor the AiB must consider whether to annul the BRO when considering an application for recall or in any review of a decision in relation to an application for recall.
- Appointment of replacement trustee
 - Form 4 is to be used to report on the outcome of a creditors meeting to appoint a replacement trustee
 - AiB is to notify original and replacement trustee if they declare the elected person as replacement trustee
 - Where there is an objection to the elected person at a meeting of creditors a period of 14 days is allowed for further written submissions to be made prior to the AiB making their decision.
- Replacement trustee in more than one sequestration
 - The AiB is required to make a decision within 14 days of the expiry of the period allowed for interested parties to make representations on an application for a replacement trustee in multiple sequestrations.
- Removal of trustee
 - Order must be made using Form 5
 - 21 days is allowed for representations to be made
 - AiB decision must be made within further 14 days
 - Trustee must be given opportunity to make representations
- Contractual powers of a trustee
 - AiB must within 14 days refer to the sheriff or make a decision to extend the 28 day period for the trustee to adopt the contract
 - AiB must notify all interested persons (within 7 days of any direction of the sheriff)
- BRO
- Conversion of a PTD to bankruptcy
 - Must be on Form 6
 - Award to be made on Form 7
- Power to cure defect
 - AiB to notify all interested parties of all decisions
- Debt depending upon a contingency
 - AiB to notify creditor and all other interested parties of any value put on a debt under a contingency