

*Draft Regulations laid before the Scottish Parliament under section 72(2) of the Bankruptcy
(Scotland) Act 1985, for approval by resolution of the Scottish Parliament.
These replace the draft Regulations of the same name laid on 29th September 2010.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

**BANKRUPTCY
DEBT**

**The Bankruptcy (Certificate for
Sequestration) (Scotland) Regulations 2010**

Made - - - - 2010

Coming into force - - 15th November 2010

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(2B)(c)(ib) and 5B(5)(a), (b) and (c) of the Bankruptcy (Scotland) Act 1985(1) and all other powers enabling them to do so.

In accordance with section 72(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1. These Regulations may be cited as the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010 and come into force on 15th November 2010.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Bankruptcy (Scotland) Act 1985;

“the 1986 Act” means the Insolvency Act 1986(2); and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(3).

(2) Any reference in these Regulations 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

(1) 1985 c.66. Sections 5(2B)(c)(ib) and 5B(5) were inserted by section 9(1) and (2) of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) respectively.

(2) 1986 c.45.

(3) 2002 asp 17.

Communications Act 2000(4), which has been recorded and is consequently capable of being reproduced.

Authorised persons

3.—(1) The following are classes of persons prescribed for the purposes of section 5B(5)(a) of the Act as persons authorised to grant a certificate for sequestration—

- (a) persons who—
 - (i) are qualified to act as insolvency practitioners in accordance with section 390 of the 1986 Act(5); or
 - (ii) work for an insolvency practitioner as defined in regulation 3(1)(a)(i), who have been given authority by that insolvency practitioner to act on behalf of that insolvency practitioner in the granting of a certificate for sequestration; 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; 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 councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

(2) An authorised person for the purposes of section 5B(5)(a) of the Act shall not be an associate of the debtor in accordance with section 74 of the Act(6).

Further provisions relating to certification

4. Prior to granting a certificate for sequestration, an authorised person must—
- (a) provide the debtor with a copy of a Debt Advice and Information Package referred to in section 10(5) of the 2002 Act;
 - (b) advise the debtor of the options of a voluntary repayment plan, a debt payment programme under the Debt Arrangement Scheme or a trust deed; and
 - (c) advise the debtor of 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/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;

(4) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

(5) 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18; the Insolvency Act 2000 (c.39), section 8, Schedule 4, part 11, paragraph 16(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005, S.S.I. 2005/465, article 2, Schedule 1, paragraph 18(3); the Mental Capacity Act 2005 (c.9), section 67(1), (2), Schedule 6, paragraph 31(3), Schedule 7; and the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, paragraph 6.

(6) 1985 c.66. Section 74 was amended by the Civil Partnership Act 2004 (c.33), section 261(2), Schedule 28, paragraph 40; the Bankruptcy (Scotland) Regulations 2008 (S.S.I. 2008/82), regulation 8 and the Occupational Pension Schemes (Investment) Regulations 1996, S.I. 1996/3127, regulation 3(2).

- (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.

The form and manner of certificate

5.—(1) A certificate for sequestration granted by an authorised person on the application of a debtor shall be in the form of the Form set out in the Schedule to these Regulations.

(2) The certificate for sequestration must be signed and dated by an authorised person and signed and dated by the debtor to the effect provided in the form of the Form set out in the Schedule to these Regulations.

(3) A valid certificate for sequestration must in the case of the authorised persons referred to in regulation 3(1) be printed on the headed notepaper of the organisation to which the authorised person belongs, where the authorised person belongs to an organisation, or in other cases on the authorised person's headed notepaper.

Fees

6. A nil fee is chargeable for granting a certificate for sequestration.

The prescribed period

7. The time period prescribed for a granted certificate for sequestration for the purposes of section 5(2B)(c)(ib) of the Act⁽⁷⁾ is 30 days.

St Andrew's House,
Edinburgh

Authorised to sign by the Scottish Ministers

(7) Section 5(2B)(c)(ib) was inserted by section 9(2) of the Home Owner and Debtor Protection (Scotland) Act 2010.

SCHEDULE

Regulation 5

FORM

CERTIFICATE FOR SEQUESTRATION

This certificate is invalid unless—

- completed by an authorised person as defined in regulation 3 of the Bankruptcy (Certificate for Sequestration)(Scotland) Regulations 2010,
- countersigned by the debtor, and
- printed on the headed notepaper of the organisation to which an authorised person referred to in regulation 3(1) belongs, where the authorised person belongs to an organisation, or in other cases on the authorised person’s headed notepaper.

This certificate is valid for thirty days including the date signed by the authorised person,

I, _____ (authorised person’s name), confirm that, under Regulation 3 of the Bankruptcy (Certificate for Sequestration)(Scotland) Regulations 2010, I am authorised to sign this certificate which has been applied for by the debtor, and certify that, on the basis of information provided to me, by

| | |
|--|----------------------------------|
| | Insert debtor’s name and title |
| | Insert debtor’s address |
| | |
| | |
| | Town |
| | County |
| | Postcode |
| | Insert debtor’s telephone number |
| | Insert debtor’s date of birth, |

that he/she* is unable to pay his/her* debts as they become due.

I have provided the debtor with a copy of the Debt Advice and Information Package and, where appropriate, have advised the debtor of the options of a voluntary repayment plan, a debt payment programme under the Debt Arrangement Scheme or a trust deed.

I have advised the debtor that an award of sequestration, if granted, is recorded in a public register and may result in one or more of—

- (a) the debtor being refused credit, or being offered credit at a higher rate, whether before or after the date of the debtor being discharged;
- (b) the debtor not being able to remain in his/her current place of residence;
- (c) the debtor being required to relinquish property which they own;
- (d) the debtor requiring to make contributions from income for the benefit of creditors;
- (e) damage to the debtor’s business interests and employment prospects;
- (f) the debtor still being liable for some debts which are excluded.
- (g) the debtor’s past financial transactions being investigated; and
- (h) other restrictions or requirements imposed on the debtor as a result of the debtor’s own circumstances and actions.

_____ (signature of authorised person)

_____ (date)

* Delete as appropriate

AUTHORISED PERSON'S DETAILS

| | |
|--|---|
| | Insert authorised person's name |
| | Insert authorised person's job title |
| | Insert authorised person's organisation |
| | Insert authorised person's professional address |
| | Town |
| | County |
| | Postcode |
| | Insert authorised person's email address |
| | Insert authorised person's telephone number |

Please select qualification under which you are authorised to grant a certificate for sequestration:

- persons qualified to act as insolvency practitioners in accordance with section 390 of the 1986 Act(a)
- persons who 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
- persons approved for the purposes of the Debt Arrangement Scheme
- persons who 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
- persons who work as money advisers for councils constituted under section 2 on the Local Government etc. (Scotland) Act 1994 (c.39)
- persons who work for an insolvency practitioner as defined in regulation 3(1)(a)(i), who have been given authority by that insolvency practitioner to act on behalf of that insolvency practitioner in the granting of a certificate of sequestration.

THIS CERTIFICATE IS VALID FOR THIRTY DAYS INCLUDING THE DATE SIGNED BY THE AUTHORISED PERSON,

DECLARATION AND SIGNATURE OF DEBTOR

I _____(debtor's name) confirm that I have provided the authorised person with correct and complete information about my financial circumstances.

I understand that this certificate is valid for thirty days including the date signed by the authorised person..

_____ (signature of debtor)

_____ (date)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for a Certificate for Sequestration of a debtor's estate to be granted by an authorised person who will certify that the debtor has demonstrated that he or she is not able to pay his or her debts as they become due under the Bankruptcy (Scotland) Act 1985 as amended by the Home Owner and Debtor Protection (Scotland) Act 2010.

An authorised person will be entitled to rely on statements and paperwork provided by the debtor in granting a certificate for sequestration. In particular, an authorised person is entitled to rely on the information provided by a debtor as to their financial circumstances as declared in the Certificate for Sequestration form set out in the Schedule to these Regulations.

In terms of Regulation 3(1)(a), insolvency practitioners are designated as persons authorised to grant a Certificate for Sequestration as are persons who work for an insolvency practitioner as defined in regulation 3(1)(a)(i), who have been given authority by that insolvency practitioner to act on behalf of that insolvency practitioner in the granting of a certificate of sequestration.

Regulation 3(1)(b) also includes persons approved for the purposes of the Debt Arrangement Scheme and persons working as money advisers for the organisations or persons listed in regulation 3(1)(b)(i), (iii) and (iv).

Regulation 7, and the form of the Certificate of Sequestration in the Schedule to these Regulations, refer to the prescribed period being 30 days ending on the date on which a debtor may make an application for sequestration. This is intended to allow the flexibility of the certificate and debtor application being signed on the same day.