



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Miscellaneous amendments

44 Representation of Accountant in Bankruptcy in sheriff court

After section 1C of the 1985 Act insert—

“1D Conduct of proceedings in the sheriff court

- (1) A person authorised by the Accountant in Bankruptcy may conduct civil proceedings in the sheriff court in relation to a function of the Accountant in Bankruptcy (including the functions listed in section 1A).
- (2) In subsection (1), “civil proceedings” are proceedings which are not in respect of an offence.”.

45 Failure to send statements of assets and liabilities

- (1) In section 5 of the 1985 Act (sequestration of the estate of living or deceased debtor)—
 - (a) in subsection (9)—
 - (i) paragraph (a) and the word “or” immediately following it are repealed, and
 - (ii) in paragraph (b), for “such statement of assets and liabilities” substitute “a statement of assets and liabilities sent to the Accountant in Bankruptcy in accordance with subsection (6A)”, and
 - (b) in subsection (10), paragraph (a) and the word “or” immediately following it are repealed.
- (2) In section 19 of the 1985 Act (statement of assets and liabilities etc.)—
 - (a) in subsection (3)—
 - (i) paragraph (a) is repealed, and
 - (ii) in paragraph (b), for “such statement of assets and liabilities” substitute “a statement of assets and liabilities sent to the trustee in accordance with subsection (1) or (2)”, and

- (b) in subsection (4), paragraph (a) and the word “or” immediately following it are repealed.

46 Time limits for sequestration of limited partnership

- (1) In section 8 of the 1985 Act (further provisions relating to presentation of petitions), for subsection (2) substitute—

“(2) A petition for the sequestration of the estate of a limited partnership may be presented—

- (a) by a qualified creditor or qualified creditors only if the apparent insolvency founded on in the petition was constituted within 4 months (or such other period as may be prescribed) before the date of presentation of the petition, or
- (b) at any time by—
 - (i) a temporary administrator,
 - (ii) a member State liquidator appointed in main proceedings, or
 - (iii) a trustee acting under a trust deed.”.

- (2) In section 8A of the 1985 Act (further provisions relating to debtor applications), for subsection (2) substitute—

“(2) A debtor application made in relation to the estate of a limited partnership may be made—

- (a) at any time, or
- (b) within such time as may be prescribed.”.

47 Petition for sequestration by trustee under trust deed

In section 12(3) of the 1985 Act (conditions for sheriff to award sequestration), for paragraph (e) substitute—

- “(e) that, in the case of a petition by a trustee—
- (i) one or more of the conditions in section 5(2C)(a) applies, or
 - (ii) the petition includes an averment in accordance with section 5(2C)(b).”.

48 Effect of sequestration: renewal of period of inhibition etc.

In section 14 of the 1985 Act (registration of warrant or determination of debtor application), for subsection (4) substitute—

“(4) The trustee may, if not discharged, send a memorandum in a form prescribed by the Court of Session by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of—

- (a) the period of 3 years mentioned in subsection (3)(b), or
- (b) a period for which the effect mentioned in subsection (2) has been renewed by virtue of subsection (4A).

(4A) The recording of a memorandum sent in accordance with subsection (4) renews the effect mentioned in subsection (2) for a period of 3 years beginning with the expiry of—

- (a) the period mentioned in subsection (3)(b), or

(b) as the case may be, the period mentioned in subsection (4)(b).

(4B) The trustee may, if appointed or reappointed under section 58B, send a memorandum in a form prescribed by the Court of Session by act of sederunt to the Keeper of the Register of Inhibitions for recording in that register before the expiry of that appointment.

(4C) The recording of a memorandum sent in accordance with subsection (4B) imposes the effect mentioned in subsection (2) for a period of 3 years beginning with the day of notification in accordance with section 58C(1).”.

49 Division and sale of debtor’s family home

In section 40 of the 1985 Act (power of trustee in relation to the debtor’s family home)

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- (a) in subsection (1)(b), after “subsection (2)” insert “or, as the case may be, subsection (3)”, and
 - (b) in subsection (3A), for “subsection (1)(b)” substitute “subsection (2) or (3)”.

50 Effect of discharge of debtor

In section 55 of the 1985 Act (effect of discharge under section 54 or 54A), after subsection (3) insert—

“(4) Nothing in this section affects regulations in relation to which section 73B of the [Education \(Scotland\) Act 1980 \(c.44\)](#) (regulations relating to student loans) applies.”.

51 Offence of obtaining credit: increase in amount

In section 67(9)(a) of the 1985 Act (offence of obtaining credit above certain amount without giving information as to status etc.), for “£500” substitute “£2000”.

52 Bankruptcy restrictions undertaking: repeal

Section 56G of the 1985 Act (which makes provision about bankruptcy restrictions undertakings) is repealed.

53 Debt arrangement schemes: extension to non-natural persons and fees

- (1) The [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) is amended as follows.
- (2) In section 1 (debt arrangement scheme), for “individuals” substitute “persons”.
- (3) In section 7(2) (debt payment programmes: power to make further provision), after paragraph (ua) insert—
 - “(ub) the remuneration of payments distributors and money advisers,”.
- (4) Section 9(2) is repealed.