

2014 No. 261 (C. 23)

INSOLVENCY

BANKRUPTCY

DEBT

**The Bankruptcy and Debt Advice (Scotland) Act 2014
(Commencement No. 2, Savings and Transitionals) Order 2014**

Made - - - - - *29th September 2014*

Laid before the Scottish Parliament *1st October 2014*

Coming into force *1st April 2015*

The Scottish Ministers make the following Order in exercise of the power conferred by section 57(2) and (3) of the Bankruptcy and Debt Advice (Scotland) Act 2014^(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Bankruptcy and Debt Advice (Scotland) Act 2014 (Commencement No. 2, Savings and Transitionals) Order 2014 and comes into force on 1st April 2015.

Interpretation

2.—(1) In this Order—

“the Act” means the Bankruptcy and Debt Advice (Scotland) Act 2014; and

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985^(b).

(2) This Order is to be construed in accordance with section 73 (interpretation) of the 1985 Act^(c).

(a) 2014 asp 11 (“the Act”). Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) allows the power to be exercised so as to appoint different days for different purposes.

(b) 1985 c.66 (“the 1985 Act”).

(c) Section 73 is relevantly amended by paragraph 35 of schedule 3 and schedule 4 to the Act. Section 73(1) defines “debtor application” for the purposes of the 1985 Act and section 73(6) and (6A) provides that any reference in the 1985 Act to a time when a petition is presented or a debtor application is made is to be construed as a reference to the time when the petition is received by the sheriff clerk or the application is received by the Accountant in Bankruptcy.

Day appointed

3. The day appointed for the coming into force of the Act, insofar as not already in force, is 1st April 2015, except in respect of section 27 (recall of sequestration by Accountant in Bankruptcy) for the purpose of inserting section 17G(7) into the 1985 Act.

Savings and transitional arrangements

Sequestration before 1st April 2015

4.—(1) Except as mentioned in paragraph (3) and article 6, nothing brought into force by this Order 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) The 1985 Act, as in force immediately before 1st April 2015, continues to apply and have effect in relation to any such sequestration.

(3) This article does not apply as regards the following provisions of the Act—

- (a) section 8 (moratorium on diligence),
- (b) section 12 (concurrent proceedings: recall),
- (c) section 20 (unclaimed dividends and unapplied balances),
- (d) section 22 (register of insolvencies),
- (e) section 24 (abolition of Edinburgh Gazette requirements),
- (f) section 25 (directions),
- (g) sections 26(1)(a), (2) and (3) and 27 (recall of sequestration),
- (h) section 34 (conversion of trust deed into sequestration),
- (i) sections 38 to 43 (review of decisions made by Accountant in Bankruptcy),
- (j) section 48 (renewal of inhibition period),
- (k) section 49 (division and sale of family home),
- (l) section 50 (effect of debtor discharge), and
- (m) in schedule 3—
 - (i) paragraph 3(a) (moratorium on diligence and register of insolvencies),
 - (ii) paragraphs 12 and 13 (expiry of inhibitory effect sequestration: recall),
 - (iii) paragraphs 25 and 26 (review by Accountant in Bankruptcy of adjudication of claims),
 - (iv) paragraph 31 (unclaimed dividends and unapplied balances), and
 - (v) paragraph 35(b), (c) and (e) (definitions of “common financial tool”, “DAS register”, “debtor contribution order” and “debtor’s contribution”).

(4) For the purposes of paragraph (1) the bankruptcy restrictions undertaking of a debtor is treated as sequestration of that debtor(a).

Money advice

5.—(1) A debtor application signed by the debtor before 1st April 2015 may be made on or after that date notwithstanding that the debtor has not obtained money advice in accordance with section 5C of the 1985 Act(b).

(a) Section 52 of and schedule 3, paragraph 3(b) and schedule 4 to the Act repeal provision for bankruptcy restrictions undertakings in Scotland.

(b) Section 5C is prospectively inserted by section 1 of the Act.

(2) To that extent it is to be treated as an incomplete application under section 11A(1) of the 1985 Act(a).

Common financial tool

6.—(1) This article applies to sequestrations to which article 4(1)(a) or (b) applies, unless they meet the conditions under section 5A of the 1985 Act (low income, low asset debtors)(b).

(2) Where an application is made on or after 1st April 2015 for variation of—

- (a) an income payment order, under section 32(4) of the 1985 Act; or
- (b) an income payment agreement, under section 32(4G)(b) of that Act on a change in the debtor's circumstances,

the sheriff must have regard to the common financial tool(c).

(3) Where on or after 1st April 2015 a trustee is considering entering into a written agreement to vary an income payment agreement under section 32(4G)(a) of the 1985 Act on a change in the debtor's circumstances, the trustee must have regard to the common financial tool.

(4) In so applying the common financial tool, it is modified as follows—

- (a) regulations made under section 5D of the 1985 Act (assessment of debtor's contribution)(d) apply as if for any reference to variation or removal under section 32F of the 1985 Act(e) there were substituted a reference to variation or recall under section 32(4) of the 1985 Act; and
- (b) any provision of those regulations in pursuance of section 5D(3) to (6) of the 1985 Act (assessment of debtor's contribution) does not apply(f).

(5) For the avoidance of doubt this article does not prevent a sheriff or trustee having regard to other factors, including the amount initially determined by the order or provided for in the agreement (or any extant variation of either).

(6) The introduction of the common financial tool is not itself a change in the debtor's circumstances for the purposes of this article (or section 32(4) of the 1985 Act).

Moratorium on diligence

7. Notice received by the Accountant in Bankruptcy on or after 1st April 2015 which is—

- (a) in accordance with section 4A(1) or 4B(1) of the 1985 Act(g) (notice of intention to apply for sequestration, protected trust deed for debt payment programme); and
- (b) in the form required under the 1985 Act from that date(h),

has effect as if given on 1st April 2015 notwithstanding that it was given before that date.

Recall of sequestration

8. Section 24(1) (replacement of Edinburgh Gazette recall requirement) of the Act does not apply to a petition for recall of sequestration presented before 1st April 2015.

(a) Section 11A is prospectively inserted by section 10 of the Act.
(b) Section 5A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ("the 2007 Act"), section 15(2) and is repealed by schedule 4 to the Act.
(c) The common financial tool is made under section 5D of the 1985 Act inserted by section 3 of the Act.
(d) Inserted by section 3 of the Act.
(e) Inserted by section 4 of the Act.
(f) Equivalent provisions apply on the making or variation of an income payment order under section 32(2) of the 1985 Act, in section 32(2A) and (3) of that Act.
(g) Section 4A and 4B are prospectively inserted by section 8 of the Act.
(h) See regulation 22 of the Bankruptcy (Scotland) Regulations 2014 (S.S.I. 2014/225).

Applications for trustee directions

9. Section 25 of the Act (application for trustee directions) does not apply to any application to the sheriff for directions made before 1st April 2015 (and any appeal from any such direction).

Review of decisions by Accountant in Bankruptcy

10.—(1) The amendments in sections 38 to 42 of the Act (review of decisions by the Accountant in Bankruptcy) relevant to review by the Accountant in Bankruptcy of the following decisions of the Accountant in Bankruptcy do not apply—

- (a) to a determination notified before 1st April 2015 under section 13A(10)(b) (certificate of interim trustee discharge), or where notice is sent before that date under section 13B(4)(a)(iii) or (b) (discharge of Accountant in Bankruptcy as interim trustee), of the 1985 Act(a),
- (b) to a direction given under section 18(1) (direction for interim preservation of estate) of the 1985 Act(b) before 1st April 2015,
- (c) to a refusal to award sequestration under section 15(3A) (debtor application) of the 1985 Act(c) before 1st April 2015,
- (d) where notice is sent before 1st April 2015 under section 26A(3) (discharge of Accountant in Bankruptcy as trustee) of the 1985 Act(d),
- (e) to a determination notified before 1st April 2015 under section 27(3)(b) (certificate of original trustee’s discharge) of the 1985 Act(e),
- (f) to claims accepted or rejected in a list sent before 1st April 2015, or notification given before that date, under section 49(2A) or (4) respectively (adjudication of claims) of the 1985 Act(f), or
- (g) to a determination notified before 1st April 2015 under section 57(3)(b) (certificate of trustee discharge), or where notice is sent before that date under section 58A(4)(b) (discharge of Accountant in Bankruptcy as trustee), of the 1985 Act(g).

(2) Sections 38 to 42 of the Act do not apply to any decision by the Accountant in Bankruptcy which is subject to court proceedings by way of appeal or review before 1st April 2015.

Power of trustee in relation to debtor’s family home

11. Section 49 of the Act (procedure on power of trustee in relation to debtor’s family home) does not apply to any court proceedings commenced before 1st April 2015 (and any appeal in respect of those proceedings).

Trust deeds granted before 1st April 2015

12.—(1) Nothing brought into force by this Order except section 8 (moratorium on diligence) has effect as regards any trust deed granted before 1st April 2015.

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- (a) Sections 13A and 13B are amended by section 38(1) and (2) of the Act.
 - (b) Section 18 is amended by section 38(3) of the Act.
 - (c) Section 15(3A) was inserted by the 2007 Act, schedule 1, paragraph 13, and is substituted by section 39 of the Act.
 - (d) Section 26A(3) was inserted by the Bankruptcy (Scotland) Act 1993 (c.6) (“the 1993 Act”) and amended by the 2007 Act, schedule 1, paragraph 26(4). Section 26A is amended by section 40(1) of the Act.
 - (e) Section 27(3)(b) was amended by the 2007 Act, schedule 1, paragraph 27(1). Section 27 is amended by section 40(2) of the Act.
 - (f) Section 49(2A) was inserted by the 2007 Act, section 8(3). Section 49(4) was amended by the 2007 Act, schedule 6. Section 49 is amended by section 41 of the Act.
 - (g) Section 58A(4)(b) was inserted by the 1993 Act, Schedule 1, paragraph 25 and amended by the 2007 Act, schedule 6. Sections 57 and 58A are amended by section 42 of the Act.

(2) The 1985 Act as in force immediately before 1st April 2015, continues to apply and have effect in relation to any such trust deed.

St Andrew's House,
Edinburgh
29th September 2014

FERGUS EWING
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) from 1st April 2015, insofar as it is not already in force, except for section 27 in relation to section 17G(7) of the Bankruptcy Act 1985 (“the 1985 Act”).

The Order makes saving and transitional provision so the amendments in the 2014 Act, except as regards those listed in article 4(3), do not apply to bankruptcies where the petition to court or debtor application to the Accountant in Bankruptcy (“AIB”) for sequestration was presented or received before 1st April 2015.

Specific saving and transitional provision is also made so—

- debtor applications signed by the debtor before, but received by AIB on or after, 1st April 2015 without obtaining the money advice required by the 2014 Act, can be accepted, but are treated as incomplete applications;
- where the bankruptcy petition or debtor application was presented or received before 1st April 2015 (except for low income, low asset debtors) the court or a trustee on considering an application for variation of an income payment order or undertaking must consider the common financial tool under section 5D of the 1985 Act, but only alongside other factors, including the amount initially determined;
- although notice of intention to apply for bankruptcy, a protected trust deed or to the Debt Arrangement Scheme to obtain the protection of the moratorium on diligence etc. under section 4A or 4B of the 1985 Act can only be given on or after 1st April 2015, article 7 makes transitional provision so it can be sent before then if it is received by AIB on or after that date, and has effect as if given on 1st April 2015;
- the replacement of a requirement to advertise a petition for recall of sequestration in the Edinburgh Gazette with publication in the Register of Insolvencies does not apply to a recall petition presented before 1st April 2015 (sections 26 and 27 of the 2014 Act transferring some recall of sequestration applications from the sheriff to AIB will not generally apply to recall petitions presented before 1st April 2015);
- section 25 of the 2014 Act transferring applications by a trustee for a direction from the sheriff to AIB do not apply to an application made before 1st April 2015 (and any appeal from any such direction);
- sections 38 to 42 of the 2014 Act creating a review of AIB decisions do not apply to notification of the relevant decision before 1st April 2015, or any such decision subject to court proceedings by way of appeal or review before 1st April 2015;
- section 49 of the 2014 Act (procedure on power of trustee in relation to debtor’s family home) does not apply to court proceedings begun before 1st April 2015;
- the 2014 Act, except for the effect of the moratorium in section 8, does not have effect as regards trust deeds for the benefit of creditors granted before 1st April 2015.

Section 17G(7) of the 1985 Act which purports to give powers to the sheriff to remit a case to AIB is not commenced. This provision was included in the Bill for the 2014 Act in respect of interim recall, but, as a result of amendments made to the Bill to remove interim recall, is no longer required. Pending repeal of the provision, it does not have any substantive effect.

The 2014 Act received Royal Assent on 29th April 2014. Sections 54, 55, 57 and 58 came into force on the day after Royal Assent.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2014 Act were brought into force by commencement order made before the date of this Order:—

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
s.1(2) (partially) for the purpose of making subordinate legislation	30th June 2014	S.S.I. 2014/172
s.2 (partially) for the purpose of making subordinate legislation		
s. 3		
s.4 (partially) for the purpose of making subordinate legislation		
s.5 for the purpose of making subordinate legislation		
s. 7 (partially) for the purpose of making subordinate legislation		
s. 9(1) (partially) for the purpose of making subordinate legislation		
s. 17 (partially) for the purpose of making subordinate legislation		
s. 19 (partially) for the purpose of making subordinate legislation		
s. 21 (partially) for the purpose of making subordinate legislation		
s. 22 (partially) for the purpose of making subordinate legislation		
s. 23(1) (partially) for the purpose of making directions and subordinate legislation		
s. 23(3) (partially) for the purpose of making subordinate legislation		
s.36		
s.44		
s.46 (partially) for the purpose of making subordinate legislation		
s. 48 (partially) for the purpose of making subordinate legislation		
s. 53(1) (partially)		
s. 53(2) and (4) (partially) for the purpose of making subordinate legislation		
s.53(3)		
s. 56 (partially)		
sch 1 (partially) for the purpose of making subordinate legislation		
In sch 3—		
para 1		
para 2 (partially)		
para 34		
para 35(h)		
para 38		
Sch 4 (partially)		

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