

POLICY NOTE

THE BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014 (CONSEQUENTIAL PROVISIONS) ORDER 2016

SSI 2016/140

1. The above Order is made by the Scottish Ministers in exercise of the powers conferred by section 55 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) and all other powers enabling them to do so. The Order is subject to the affirmative procedure.

Policy Objectives

2. This Order makes minor amendments to the Bankruptcy (Scotland) Act 1985, in consequence of paragraphs 6(a) and 7 of schedule 3 to the 2014 Act, which made clear that limited liability partnerships cannot be sequestrated, and clarified the meaning of apparent insolvency.

3. These paragraphs enacted recommendations 4 and 5 from the Scottish Law Commission *Report on the Consolidation of Bankruptcy Legislation in Scotland*.¹ The need for the amendments was raised by the Delegated Powers and Law Reform Committee of the Scottish Parliament in connection with the Bankruptcy (Scotland) Bill currently before the Scottish Parliament.

4. The two consequential amendments to the provisions in the Bankruptcy (Scotland) Act 1985 on apparent insolvency in this Order are required to give full effect to the changes in the 1985 Act by paragraphs 6(a) and 7 of schedule 3 of the 2014 Act. They clarify cross-references in provisions on when the apparent insolvency of a debtor is constituted and providing that for the avoidance of doubt the fact limited liability partnerships cannot be sequestrated does not affect their apparent insolvency.

Consultation

5. There has been no formal consultation on the amendments in this instrument, as they give effect to the intention of the 2014 Act provisions. There was extensive engagement with stakeholders during the passage of the 2014 Act. In 2012 the Scottish Government consulted on its proposals for bankruptcy law reforms. Its “Consultation on Bankruptcy Reform” –

<http://www.scotland.gov.uk/Publications/2012/02/6283/0>

was published on 24 February 2012 and remained open until 18 May 2012. Throughout the parliamentary process for the Bill for the 2014 Act the Scottish Government also engaged with various stakeholder groups, providing them with an opportunity to raise any concerns.

6. Additionally, the Accountant in Bankruptcy (“AiB”) held a rolling programme of stakeholder events between December 2012 and August 2014. Following a presentation from AiB at the end of each event, delegates were invited to participate in a question and answer

⁽¹⁾ *Report on the Consolidation of Bankruptcy Legislation in Scotland* (Scot Law Com No 232).

session; allowing them to contribute to the development of the Regulations. In total, approximately 130 delegates attended these events representing a wide range of businesses and representative bodies, including; the Insolvency Practitioners Association, ICAS, Lloyds Banking Group, Credit fix, Solicitors and Money Advice (public and private sector).

Impact Assessments

7. Given that the nature of this Order is to make consequential amendments to the 1985 Act as a result of changes enacted by paragraphs 6(a) and 7 of schedule 3 to the 2014 Act, a Business Regulatory Impact Assessment (“BRIA”) has not been carried out. The impact of the legislation was assessed in the BRIA for the 2014 Act. A copy of the BRIA can be found on the Accountant in Bankruptcy’s website at: www.aib.gov.uk

8. An Equality Impact Assessment (“EQIA”) has not been carried out for this instrument, given the nature of the amendments. An EQIA was completed for the 2014 Act. AiB administers each bankruptcy on an individual basis, and has appropriate measures in place to ensure that the collation and transmission of statistics and information regarding individuals are completed sensitively. The changes set out in this Order will apply equally to all individuals. AiB regularly consults with stakeholders, service users and the general public on reforms to bankruptcy law to ensure that the needs of all groups of society who require to enter bankruptcy are considered and that no particular groups are disadvantaged or excluded more than others. A copy of the EQIA published in relation to the 2014 Act can be found on the Scottish Government website at: www.scotland.gov.uk

Financial Effects

8. No material additional costs on the Scottish Government, local government or on business are envisaged as a result of the Order. A financial memorandum was published for the Bill for the 2014 Act and can be found at:

[http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20\(Scotland\)%20Bill/b34as4-stage2-supp-fm.pdf](http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20(Scotland)%20Bill/b34as4-stage2-supp-fm.pdf)

The Accountant in Bankruptcy on behalf of the Scottish Government
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