

POLICY NOTE

The Bankruptcy (Scotland) Act 2016 (Commencement) Regulations 2016

SSI 2016/294

1. The above Regulations are made by the Scottish Ministers in exercise of the powers conferred by section 237(2) of the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”). They are laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The policy objective of these Regulations is to bring the 2016 Act into force on 30 November 2016.

Commencement

3. The Bill for the 2016 Act which consolidates and replaces Scots bankruptcy law (and the law of trust deeds for the benefit of creditors) currently under the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) received Royal Assent on 28th April 2016. Sections 225, 226, 228 to 230, 237 and 238 of the Act came into force on the following day. These Regulations bring the rest of the 2016 Act into force on 30 November 2016.

Savings – sequestrations and trust deeds before 30 November 2016

4. The new Act will apply to sequestrations petitioned for or applied for on or after 30 November 2016 under transitionals and savings arrangements in the 2016 Act itself (see sections 234(3) and 236). Accordingly, sequestration processes instigated, in that sense, before that date continue under the 1985 Act (as amended).
5. The Protected Trust Deed provisions consolidated in Part 14 of the 2016 Act will apply to trust deeds executed on or after the same date, 30 November 2016 (see sections 162 and 234(3) of the 2016 Act).
6. The 2016 Act also contains consolidation provisions for the continuity of bankruptcy law (in particular section 235). Things done under the 1985 Act have effect under corresponding provisions of the 2016 Act, subject to specific savings or transitionals. So far as the context permits, references to the 2016 Act and provisions it replaces are interpreted as including as respects times, circumstances or purposes a reference to the corresponding provisions. Tables of Destinations and Derivations identifying the corresponding provisions are available¹. Unless the context otherwise requires, references in enactments or documents to notour bankruptcy or apparent insolvency, sequestration under the Bankruptcy (Scotland) Acts 1913 and 1985 and trustees in sequestration are construed as references to

¹ <https://www.aib.gov.uk/bankruptcy-scotland-act-2016-tables-derivations-and-destinations-draft>

apparent insolvency, sequestration and trustees under the new Act (section 234(7)).

Consultation

7. AiB has worked closely with stakeholders who have provided valuable feedback on the proposals for consolidation. This goes back to August 2011, when the Scottish Law Commission (“SLC”) initially published their “Consolidation of the Bankruptcy Legislation in Scotland” consultation paper, making a number of recommendations following responses to that consultation. Virtually all of the SLC recommendations were implemented by the Bankruptcy and Debt Advice (Scotland) Act 2014 which allowed for a straight consolidation of the existing law in the new Act.
8. There was extensive engagement with key stakeholders during the passage of the Consolidation Act. The Delegated Powers and Law Reform Committee took evidence from ICAS and the R3 Technical Committee who were broadly supportive of the Bill.

Impact Assessments

9. A Business and Regulatory Impact Assessment (BRIA) has been completed. A copy of this BRIA can be found on the AiB website at: www.aib.gov.uk.
10. An Equality Impact Assessment (EQIA) has not been carried out as these Regulations only implement the 2016 Act which was previously subject to an EQIA and which highlighted no issues. AiB has, however, given thought to the effects of these regulations and the changes set out in this instrument will apply equally to all. 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.

Financial Effects

11. AiB has considered the financial impact of the Consolidation in the 2016 Act and associated Regulations on firms. Stakeholders mentioned to the DPLRC the costs that would require to be incurred. Whilst there will be one-off limited costs and training requirements these will be mitigated over time by the savings associated by simpler statute and reduced time in sourcing appropriate legislation.