

# **BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Advice and education***

5. Sections under this heading make provision for debtors to receive mandatory advice from an approved money adviser before making an application to enter into sequestration and for a specific group of vulnerable debtors to receive targeted financial education, to help improve their awareness of the underlying causes of financial difficulty and improve their ability to better manage their finances and reduce the burden of debt.

#### ***Section 1 – Sequestration of estate of living debtor: money advice***

6. This section amends the 1985 Act to add a new section 5C ('Money advice'), a new section 5(4BA) and a new section 5(2B)(ba). These changes provide that an application for sequestration by a debtor can only be made if the debtor has been given advice on their financial circumstances, the effect of the proposed sequestration and the process of application for sequestration by a 'money adviser'. The application must now include a declaration by the adviser that advice has been given. Section 5C(2) also provides for a definition of who can act as a money adviser to be prescribed by regulations. Other matters on which advice must be obtained and who can act as a money adviser have been prescribed in Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014<sup>1</sup>. A similar process is in place for money advice as part of the Debt Arrangement Scheme under the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#).

#### ***Section 2 – Financial education for debtor***

7. This section inserts a new section 43B ('Financial education') into the 1985 Act which, implemented by regulations about the appropriate courses, provides for debtors whose financial history and circumstances identify them as particularly vulnerable to problems as a result of recurring debts (according to the criteria in section 43B(2) and (3)) to be required to receive a course of targeted financial education. The trustee must decide whether a debtor should undertake a course of targeted financial education within 6 months of the date of award of sequestration, or as soon as reasonably practicable in the case of a trustee making contact with a debtor whose previous whereabouts were unknown. The content, format and delivery of the targeted financial education will be set out in regulations. This power has been used in regulation 17 of the Bankruptcy (Scotland) Regulations 2014<sup>2</sup>.

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<sup>1</sup> S.S.I. 2014/296.

<sup>2</sup> S.S.I. 2014/225.