

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules

Schedule 1 ('minimal asset' debtors with few assets)

102. **Schedule 1** is introduced by section 5(2) and introduces a new Schedule A1 ('Debtors to whom section 5(2ZA) applies: application of Act') to the 1985 Act to provide for its application to 'minimal asset' debtors. It includes provision for how that 'minimal asset' status modifies sequestration for the operation of the MAP, AiB's duty to consider whether that status ceases to apply, the debtor's right of appeal against such a decision and the modification of certain provisions of the 1985 Act where that status has ceased to apply.

Schedule 2 (Sederunt book)

103. **Schedule 2** is introduced by section 23(4) and sets out information to be included in the sederunt book.

Schedule 3 (minor and consequential amendments)

104. **Schedule 3**, introduced by section 56(1), sets out minor and consequential amendments. It includes certain provisions to implement in the 1985 Act a number of recommendations from the Scottish Law Commission report as part of its project in working towards a full consolidation of the 1985 Act¹. The amendments are technical amendments which can be reviewed and incorporated in a consolidation Bill in due course.
105. They include paragraph 34(a) and consequential repeals amending section 72(1) of the 1985 Act to clarify that the general power to make different provision for different cases or classes of case extends to all of the subordinate powers in the 1985 Act. The effect is to confirm it extends to the affirmative Parliamentary procedure regulation-making powers in the Act².
106. **Paragraph 38** provides for the affirmative Parliamentary procedure to apply to the use of the DAS scheme regulation-making powers added by sections 3(2) and 53 of the Act.
107. Some further consequential amendments to other legislation have been made in the Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2014³.

¹ Link to Scottish Law Commission *Report on the Consolidation of Bankruptcy Legislation in Scotland*, http://www.scotlawcom.gov.uk/files/7113/6853/1202/Report_on_the_Consolidation_of_Bankruptcy_Legislation_in_Scotland.pdf

² The Scottish Law Commission discussed this issue in their report, *ibid*, p.12.

³ S.S.I. 2014/293.

Schedule 4 (repeals)

108. [Schedule 4](#) details repeals in consequence of the changes made by the Act.

Miscellaneous subordinate legislation connected to implementation of the Act

109. General subordinate legislation to implement matters under the Act has been made in amendments to general bankruptcy regulations, in particular prescribing forms under the 1985 Act as amended in the Bankruptcy (Scotland) Regulations 2014⁴. Provision to update bankruptcy fees has been made in the Bankruptcy (Scotland) Fees Regulations 2014⁵. A related increase in the debt limit for debtor application was brought into force by article 2 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 9 and Savings Amendment) Order 2014⁶. Court rules related to the changes have been made in the Act of Sederunt (Rules of the Court of Session and Sheriff Court Bankruptcy Rules Amendment) (Bankruptcy and Debt Advice (Scotland) Act 2014) 2015⁷.

⁴ S.S.I. 2014/225, amended by regulation 2 of S.S.I. 2015/80.

⁵ S.S.I. 2014/227, amended by regulation 4 of S.S.I. 2015/80.

⁶ S.S.I. 2014/173.

⁷ S.S.I. 2015/119.