

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sequestration where debtor has few assets

Section 5 – Debtor application

14. This section amends section 5 of the 1985 Act ('Sequestration of estate of living or deceased debtor'), in order to replace the current low income, low asset route in to bankruptcy (as set out in sections 5(2B)(c)(ia) and 5A of the 1985 Act and the [Bankruptcy \(Scotland\) Act 1985 \(Low Income, Low Asset Debtors etc.\) Regulations 2008 \(SSI 2008/81\)](#)) with a new 'minimal asset process' ('MAP') for debtor applications under the 1985 Act, which is intended to provide debt relief to debtors who have few or limited assets¹. It allows discharge of the debtor after 6 months, but is subject to eligibility criteria and restrictions on the debtor. The criteria for the new process to apply are set out in new section 5(2ZA) to (2ZE) of the 1985 Act.
15. This section also inserts, before Schedule 1 to the 1985 Act, a new Schedule A1 to provide for the application of the Act to 'minimal asset' debtors, AiB's duty to consider whether it ceases to apply, the debtor's right of appeal against such a decision and modification of certain provisions of the Act in order to provide for the operation of the MAP.

Section 6 – Circumstances where Accountant in Bankruptcy appointed as trustee

16. This section amends section 2 of the 1985 Act ('appointment and functions of trustee in sequestration') in order to provide for AiB to be deemed the trustee in sequestration in all cases where the debtor meets the eligibility criteria for the 'minimal asset' process and AiB awards sequestration of the debtor's estate, as at present for low income, low asset debtors. It also follows recommendation 2 of the Scottish Law Commission report.

Section 7 – Discharge, conditions etc.

17. This section inserts 3 new sections. Section 54C disapplies the discharge procedures for 'minimal asset' process cases (which are discharged automatically subject only to being transferred into ordinary sequestration under the arrangements in new Schedule A1). Section 55A ('Discharge under section 54C: conditions') and section 55B ('Section 55A: sanctions) provide that a debtor awarded sequestration on a 'minimal asset' basis is subject to a post-bankruptcy restriction. The restriction will last for a period of 6 months from the date of the debtor's discharge and will impose the following obligations on the debtor:

¹ [S.S.I. 2008/81](#) is repealed by [S.S.I. 2014/296](#) subject to transitional arrangements.

*These notes relate to the Bankruptcy and Debt Advice (Scotland)
Act 2014 (asp 11) which received Royal Assent on 29 April 2014*

- a. The debtor (either alone or jointly with another person) must not obtain credit either of £2,000 or more; or of any amount, where at the time of obtaining credit, they have debts of £1,000 (or such other sum as may be prescribed) or more – unless they inform the person from who they are obtaining credit that they are subject to a post-bankruptcy restriction; and
 - b. The debtor must disclose to those they wish to do business with, the name (or trading style) under which the debtor was sequestrated.
18. The effect of a breach of the restrictions mentioned above during the 6 month period after the date of the debtor's discharge is that the restriction will extend for a further 6 months and any further breach during the extended period (i.e. from 6 to 12 months following the date of discharge) will amount to an offence.