

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Records***

##### ***Section 22 – Register of insolvencies***

47. **Section 22** amends subsection (1)(b) of section 1A to the 1985 Act ('Supervisory functions of the Accountant in Bankruptcy'), in order to provide that the form of the register of insolvencies will, in future, be governed by regulations made by the Scottish Ministers, instead of the Court of Session by act of sederunt. Regulations have been made in regulation 4 and Schedule 2 to the Bankruptcy (Scotland) Regulations 2014<sup>1</sup>.
48. This section also inserts a new subsection (5), so regulations may allow certain details to be withheld from the register of insolvencies where, in the opinion of AiB, inclusion of any information would be likely to jeopardise the safety or welfare of any person (provision has been made in regulation 4(2) of the regulations referred to in the preceding paragraph).

##### ***Section 23 – Sederunt book***

49. This section amends section 57 ('Discharge of trustee'), section 58A ('Discharge of Accountant in Bankruptcy'), section 62 ('sederunt book and other documents') of, as well as inserting a new Schedule 3A ('Information to be included in the sederunt book') into, the 1985 Act.
50. These changes to the 'sederunt book' or formal records required to be kept by the trustee provide that a sederunt book must be sent to AiB as an electronic version in such format as AiB may from time to time direct. This allows AiB to enable electronic transmission and receipt of documents although trustees may continue to hold the sederunt book in any format that they choose before sending it to AiB, in accordance with section 57(1)(b) of the 1985 Act. Whilst the sederunt book will no longer be in a paper 'book' format at the time that it is sent to the AiB, the name 'sederunt book' is retained in the 1985 Act.

##### ***Section 24 – Abolition of certain requirements in relation to Edinburgh Gazette***

51. This section amends section 16 ('Petitions for recall of sequestration') and section 45 ('Public examination') of the 1985 Act and repeals section 71 ('Edinburgh Gazette') of the 1985 Act in order to remove requirements to advertise a petition for recall of an award of bankruptcy, and an order for the debtor's attendance for public examination. In future, AiB will arrange for advertisement in the register of insolvencies. Section 30(c) of the Act amends advertisement of the appointment of replacement trustees in the same way.

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<sup>1</sup> S.S.I. 2014/225, amended by regulation 2(6) of S.S.I. 2015/80.