

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Functions of sheriff and Accountant in Bankruptcy in sequestration

Section 26 – Recall of sequestration by sheriff

55. This section amends sections 16 ('Petitions for recall of sequestration') and 17 (to be re-titled, 'Recall of sequestration by sheriff') of the 1985 Act in order to modify the process for the recall of bankruptcy. Where the only ground for recall is that the debtor can pay the debtor's debt in full, except following a petition by a creditor where the debtor is claiming that the debtor was not apparently insolvent at the date of sequestration, application must be made to AiB and not the sheriff—see the new sections inserted by section 27 of the Act. Provision is also made so recall by the sheriff of bankruptcy awards can in most cases be sought at any time (section 26(1)(b) of the Act). It will also no longer be possible to obtain recall from the sheriff by giving sufficient security. Where appropriate, the final order will be withheld until all funds have been distributed to creditors.