

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Moratorium on diligence***

##### ***Section 8 – Moratorium on diligence***

19. This section inserts into the 1985 Act provisions for a moratorium on diligence to apply on giving notice of intention to apply in relation to sequestration, a protected trust deed or a debt payment programme. It also applies to other bodies, such as trusts and partnerships, that can be sequestrated under the 1985 Act.
20. Section 4A provides that, on receipt of written notice of an individual's intention to apply for sequestration, the AiB must, without delay, enter the individual's name into the register of insolvencies and/or the DAS register (as appropriate).
21. Section 4C provides that, once the individual's name has been entered into either the register of insolvencies or the DAS register, then regardless of the debt relief or debt payment solution for which they intend to apply, they will be protected by a moratorium on diligence for a period initially of 6 weeks, where after this will extend to give time for the respective application to be processed. In this context, 'a moratorium on diligence' means that diligence, including arrestment, money attachment, interim attachment or attachment of the individual's estate cannot have effect during the period for which the moratorium is in place. Only one intimation can be given and, therefore, only one moratorium applied for within a 12 month period. In certain cases the moratorium does not protect the debtor from diligence which has already reached an advanced stage. In particular it is competent to auction an article which has been attached under the DAS scheme where notice has been given to the debtor under section 27(4) of the 2002 Act or the article has been removed, or notice has been given under section 53 of that Act. Furthermore it is competent to implement a decree of furthcoming or implement a decree or order for sale of a ship (or share of it) or cargo, or to execute an earnings arrestment, current maintenance arrestment or conjoined arrestment order in effect before the day on which the moratorium began.
22. Section 4D sets out the detailed provision for the period during which the moratorium will be in place, in different circumstances, for example when an individual has requested a review of a decision by AiB.