

# **CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020**

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## **EXPLANATORY NOTES**

### **DETAIL ABOUT PROVISIONS**

#### *Schedule 1: Protection of the individual*

##### **Bankruptcy**

32. Paragraph 8 makes temporary modifications to section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”) as that section applies to documents which are authorised or required to be sent by or under the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”).
33. Paragraph 8(2)(a) substitutes a new section 26(2)(c) of the 2010 Act with effect that a document may be transmitted to a person electronically.
34. Paragraph 8(2)(b) repeals existing section 26(3) of the 2010 Act which requires both the sender and the recipient of a document to agree in writing that the document may be transmitted electronically.
35. Instead, paragraph 8(2)(c) substitutes a new section 26(6) of the 2010 Act. New subsection (6)(a) provides that electronic transmission of a document must be effected in a manner that the recipient has indicated to the sender that they are willing to receive the document electronically. Subsection (6)(b) makes provision as to the circumstances in which willingness to receive a document electronically may be given or inferred. Subsection (6)(c) provides that uploading a document to an electronic storage system from where it may be downloaded by the recipient may constitute electronic transmission.
36. Paragraph 9 makes provision in relation to the criteria for determining whether a debtor who applies for sequestration under section 2 of the 2016 Act is eligible for the form of sequestration known as the minimal asset process (“MAP”).
37. Paragraph 9(2)(a) raises the threshold specified in section 2(2)(b)(ii) of the 2016 Act from £17,000 to £25,000. Debtors whose total debts fall within the upper and lower monetary thresholds specified in section 2(2)(b) of the 2016 Act are eligible for MAP.
38. Paragraph 9(2)(b) inserts a new subsection (2A) into section 2 of the 2016 Act. New subsection (2A) provides for debt arising from student loans to be disregarded for the purposes of determining whether the total of an individual’s debts falls within the monetary thresholds specified in section 2(2)(b) of the 2016 Act.
39. Paragraph 10 temporarily modifies the definitions of “qualified creditor” and “qualified creditors” in section 7(1) of the 2016 Act by raising the amount of money a creditor or a group of creditors must be owed in order to be “qualified” from £3,000 to £10,000. A qualified creditor has the right to petition the court for a debtor’s bankruptcy in terms of section 2(1)(b)(i) of the 2016 Act, where the debtor is apparently insolvent.
40. Paragraph 11 temporarily extends the period within which a trustee in sequestration must submit initial proposals for a debtor contribution order to the Accountant in

*These notes relate to the Coronavirus (Scotland) (No.2) Act  
2020 (asp 10) which received Royal Assent on 26 May 2020*

Bankruptcy under section 90(2) of the 2016 Act from 6 weeks to 12 weeks. Paragraph 11(3) provides that the modification applies only where the date of the award of sequestration falls on or after the date on which paragraph 11 comes into force.

41. Paragraph 12 temporarily modifies paragraph 13 of schedule 6 of the 2016 Act to allow meetings of creditors to take place using electronic means. Paragraph 12(2)(b) makes consequential amendments.
42. Paragraph 13 modifies regulation 3 of the Bankruptcy (Scotland) Regulations 2016 ([S.S.I. 2016/397](#)) to allow the forms set out in schedule 1 of those Regulations to be signed with an electronic signature.
43. Paragraph 14 makes provision in relation to the fees which are payable where a debtor applies for sequestration under section 2(1)(a) of the 2016 Act.
44. Paragraph 14(2) inserts a temporary regulation 7A into the Bankruptcy Fees (Scotland) Regulations 2018 ([S.S.I. 2018/127](#)) (“the 2018 Regulations”). New regulation 7A creates an exemption from the fee that would otherwise be payable under entry 22 of the table of fees in the schedule of the 2018 Regulations where an individual applies for sequestration. The exemption applies to individuals who are, or have been, in receipt of certain benefits.
45. Paragraph 14(3) reduces the fees specified in entry 22 of the table of fees in the schedule of the 2018 Regulations. The fee specified in entry 22(a) is payable by a MAP debtor to whom section 2(2) of the 2016 Act applies. The fee specified in entry 22(b) is payable by any other debtor. Paragraph 14(3) reduces these fees to £50 and £150 respectively.