

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Review of decisions made by Accountant in Bankruptcy***

88. These sections provide that prior to appeals to the sheriff from certain decisions of AiB, the party who wishes to appeal must ask AiB to review the matter in question. The new review process extends to decisions AiB makes which are currently appealable to the sheriff, with certain exceptions. Those entitled to appeal may do so after AiB reviews a decision, even if that person did not ask for the original determination to be reviewed (i.e. a creditor may ask for an appeal of AiB's reviewed decision even if the debtor asked for the review). Regulations on the procedure for review applications to and decisions by AiB have been made in the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014<sup>1</sup>.

#### ***Section 38 – Review of decisions about interim trustee***

89. This section modifies sections 13A ('Termination of interim trustee's functions when interim trustee is not appointed as trustee'), 13B ('Termination of Accountant in Bankruptcy's functions where not appointed as trustee') and 18 ('Interim preservation of estate') of the 1985 Act. An interim trustee is usually (although not always) appointed on the basis of a creditor petition, for example when the creditor believes that action needs to be taken quickly in order to safeguard the debtor's estate. Later in the process, AiB may decide to appoint the interim trustee as trustee or to terminate the interim trustee's functions and appoint a different trustee. This section enables an interim trustee who has not been appointed as trustee to apply to AiB for a review of its decision.

#### ***Section 39 – Review of decision not to award sequestration***

90. This section modifies section 15 of the 1985 Act ('further provisions relating to award of sequestration') in order to make provision for the debtor and concurring creditor to apply to AiB for a review of its decision not to award bankruptcy on a debtor application within 14 days.

#### ***Section 40 – Review of decisions about replacement trustee***

91. This section modifies section 26A of the 1985 Act ('Accountant in Bankruptcy to account for intrusions') in order to enable a party to apply to AiB for a review of its decisions about discharging AiB in relation to AiB acting as trustee.

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<sup>1</sup> S.S.I. 2014/226, amended by regulation 3 of S.S.I. 2015/80.

***Section 41 – Review of decisions about adjudication of creditor’s claims***

92. This section modifies section 49 of the 1985 Act (‘adjudication of claims’). Under section 49, where AiB is the trustee, then AiB will consider creditors’ claims, on the basis of the information provided, and make an adjudication about the amount of debt which is due to each creditor, either agreeing each claim in whole or in part or rejecting it if they do not consider that it is valid. This section makes provision for creditors and debtors to apply to AiB for a review of its decision as trustee regarding its adjudication of creditors’ claims under section 49(1) or (2). Section 49(6E) provides that only a debtor with a pecuniary interest in the outcome can appeal.

***Section 42 – Review of decision about discharge of trustee***

93. This section amends section 57 of the 1985 Act (‘Discharge of trustee’) in order to make provision for interested parties to apply to AiB for a review of its decision to grant, or refuse, discharge of the trustee. The interested party (i.e. the trustee, the debtor and any creditor who has made representations) can ask AiB to review the decision within 14 days of the decision being made. Where there has been a review, the date of the review decision is to be the date the discharge decision is effective from and the initial discharge will be postponed until the 14 day review request period has elapsed.

***Section 43 – Appeals against decisions on review***

94. This section inserts a new section 63C (Review of decision by Accountant in Bankruptcy: grounds of appeal) after section 63B in the 1985 Act. It confirms for the avoidance of doubt the grounds on which appeals from AiB reviews inserted into the 1985 Act by the Act can be made.