
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) from 1st April 2015, insofar as it is not already in force, except for section 27 in relation to section 17G(7) of the Bankruptcy Act 1985 (“the 1985 Act”).

The Order makes saving and transitional provision so the amendments in the 2014 Act, except as regards those listed in article 4(3), do not apply to bankruptcies where the petition to court or debtor application to the Accountant in Bankruptcy (“AIB”) for sequestration was presented or received before 1st April 2015.

Specific saving and transitional provision is also made so—

- debtor applications signed by the debtor before, but received by AIB on or after, 1st April 2015 without obtaining the money advice required by the 2014 Act, can be accepted, but are treated as incomplete applications;
- where the bankruptcy petition or debtor application was presented or received before 1st April 2015 (except for low income, low asset debtors) the court or a trustee on considering an application for variation of an income payment order or undertaking must consider the common financial tool under section 5D of the 1985 Act, but only alongside other factors, including the amount initially determined;
- although notice of intention to apply for bankruptcy, a protected trust deed or to the Debt Arrangement Scheme to obtain the protection of the moratorium on diligence etc. under section 4A or 4B of the 1985 Act can only be given on or after 1st April 2015, article 7 makes transitional provision so it can be sent before then if it is received by AIB on or after that date, and has effect as if given on 1st April 2015;
- the replacement of a requirement to advertise a petition for recall of sequestration in the Edinburgh Gazette with publication in the Register of Insolvencies does not apply to a recall petition presented before 1st April 2015 (sections 26 and 27 of the 2014 Act transferring some recall of sequestration applications from the sheriff to AIB will not generally apply to recall petitions presented before 1st April 2015);
- section 25 of the 2014 Act transferring applications by a trustee for a direction from the sheriff to AIB do not apply to an application made before 1st April 2015 (and any appeal from any such direction);
- sections 38 to 42 of the 2014 Act creating a review of AIB decisions do not apply to notification of the relevant decision before 1st April 2015, or any such decision subject to court proceedings by way of appeal or review before 1st April 2015;
- section 49 of the 2014 Act (procedure on power of trustee in relation to debtor’s family home) does not apply to court proceedings begun before 1st April 2015;
- the 2014 Act, except for the effect of the moratorium in section 8, does not have effect as regards trust deeds for the benefit of creditors granted before 1st April 2015.

Section 17G(7) of the 1985 Act which purports to give powers to the sheriff to remit a case to AIB is not commenced. This provision was included in the Bill for the 2014 Act in respect of interim recall, but, as a result of amendments made to the Bill to remove interim recall, is no longer required. Pending repeal of the provision, it does not have any substantive effect.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The 2014 Act received Royal Assent on 29th April 2014. Sections 54, 55, 57 and 58 came into force on the day after Royal Assent.