

POLICY NOTE

THE BANKRUPTCY AND DILIGENCE (SCOTLAND) ACT 2024 (COMMENCEMENT NO. 1, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2024

SSI 2024/373 (C. 25)

The above instrument has been made in exercise of the powers conferred on Scottish Ministers by section 22(2) and (3) of the Bankruptcy and Diligence (Scotland) Act 2024 (“the 2024 Act”). The instrument is laid but subject to no procedure.

Summary

<p>Purpose of the instrument: To bring a number of provisions of the 2024 Act into force on 20 January 2025. The provisions brought into force in these first commencement regulations primarily relate to certain modifications to the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”) and the law of diligence.</p>

Policy Objectives

This instrument is the Bankruptcy and Diligence (Scotland) Act 2024 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2024 (“the Commencement Regulations”). These Regulations bring into force the following sections of the 2024 Act on 20 January 2025. The Bill for the 2024 Act received Royal Assent on 15 July 2024 and sections 21 to 23 of the 2024 Act came into force the following day.

Section 6 (when sequestration is awarded: minimal asset process)

This modifies section 22 of the 2016 Act to correct a cross-referencing error to clarify that where there is an application for a Minimal Asset Process Bankruptcy, the Accountant in Bankruptcy (AiB) will award the sequestration without delay if AiB is satisfied that the application has been made in accordance with the 2016 Act.

Section 8 (gratuitous alienations: right acquired in good faith and for value)

This corrects a cross-referencing error in section 98(7) of the 2016 Act. It will oblige the court to grant a decree of reduction or for such restoration of property to the debtor’s estate or such other redress as may be appropriate, where there is a successful challenge of a transfer of a debtor’s assets by the debtor or another person for no value or less than full value.

Section 9 (time periods for appeals against decisions by AiB)

This amends sections 69 and 134 of the 2016 Act. Where AiB has issued a decision following an appeal to AiB on a determination issued by commissioners fixing the amount of outlays and remuneration payable to the trustee or their representatives, the specified parties in sections 69 and 134, respectively, will have 14 days from AiB’s decision to appeal to the sheriff.

Transitional Provision -

Regulation 3 of the Commencement Regulations makes transitional provision in relation to the commencement of section 9 of the 2024 Act and provides that:

- in relation to section 69 of the 2016 Act, where a determination of the commissioners fixing the amount of outlays and remuneration payable to a trustee in sequestration (or their representatives) on their resignation or death has been appealed to AiB, and AiB has issued a decision before 20 January 2025, that decision may be appealed to the sheriff up to 14 days after that date, instead of within 14 days after that decision.
- in relation to section 134 of the 2016 Act, where a determination of commissioners fixing the amount of outlays and remuneration payable to a trustee has been appealed to AiB and AiB has issued a decision before 20 January 2025, that decision may be appealed to the sheriff up to 14 days after that date, instead of within 14 days after that decision.

Section 10 (protected trust deeds: information and time to be provided to debtor)

This section creates a requirement, where a trust deed is granted by a debtor on or after 20 January 2025, for a trustee to provide the debtor with a copy of a trust deed information document in addition to the Debt Advice and Information Package (DAIP). It also requires the trustee to give the debtor adequate time to consider the information given to them and whether a trust deed is the appropriate solution to address their debts.

Saving Provision –

Regulation 4 of the Commencement Regulations provides that section 10 of the 2024 Act will have no effect on a trust deed granted prior to 20 January 2025. This will mean that a trustee is not required to provide the debtor with a copy of the trust deed information document and give them adequate time to consider the information provided, if the trust deed was granted by the debtor before 20 January 2025.

Section 13 (commissioners: disqualification from office where AiB is trustee)

This modifies sections 76 and 77 of the 2016 Act and corrects an anomaly, created by the Bankruptcy and Diligence etc. (Scotland) Act 2007, to reinstate the position that no commissioners may be elected in sequestration cases when AiB is the trustee and where a commissioner already holds office, that commissioner would cease to hold office if AiB becomes the trustee.

Section 17 (provision of debt advice and information package)

This section requires that a creditor, where they are applying to the court for a warrant for diligence on the dependence under section 15D(1) of the Debtors (Scotland) Act 1987, must provide the debtor with a Debt Advice and Information Package (DAIP). If this has not been provided the court cannot grant the warrant.

Saving Provision –

Regulation 5 of the Commencement Regulations provides that section 17 of the 2024 Act will have no effect where a creditor application for warrant for diligence on the dependence has been made before 20 January 2025. This will mean that a creditor is not required to provide the debtor with a DAIP if a creditor application to the court for warrant for diligence on the dependence was made before 20 January 2025.

Section 19 (money attachment when premises are open)

This makes it competent for a sheriff officer to execute money attachment on any day or at any time when premises are open for the purposes of trade or business without the requirement to obtain prior approval from the court where it is outside the hours of 8am and 8pm.

Section 20 (arrestment of ships on a Sunday)

This section will allow arrestment to found jurisdiction of a ship to take place on a Sunday.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

As these Regulations only fully bring into force various provisions of the 2024 Act, no formal consultation has been carried out in relation to this instrument. However, there has been ongoing consultation with stakeholders.

Impact Assessments

The following impact assessments were carried out as part of the Parliamentary passage of the 2024 Act:

- Business and regulatory impact assessment
- Children's rights and wellbeing screening template
- Equalities impact assessment results document
- Fairer Scotland duty impact assessment
- Island communities impact assessment

Financial Effects

The Minister for Public Finance confirms that no Business and Regulatory Impact Assessment is necessary as the instrument only brings into force the provisions of the 2024 Act and in itself has no financial effects on the Scottish Government, local government or on business.

Accountant in Bankruptcy
December 2024