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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 261**

**The Bankruptcy and Debt Advice (Scotland) Act 2014  
(Commencement No. 2, Savings and Transitionals) Order 2014**

*Savings and transitional arrangements*

**Sequestration before 1st April 2015**

4.—(1) Except as mentioned in paragraph (3) and article 6, nothing brought into force by this Order has effect as regards any sequestration in respect of which—

- (a) the petition is presented before 1st April 2015; or
- (b) a debtor application was made before that date.

(2) The 1985 Act, as in force immediately before 1st April 2015, continues to apply and have effect in relation to any such sequestration.

(3) This article does not apply as regards the following provisions of the Act—

- (a) section 8 (moratorium on diligence),
- (b) section 12 (concurrent proceedings: recall),
- (c) section 20 (unclaimed dividends and unapplied balances),
- (d) section 22 (register of insolvencies),
- (e) section 24 (abolition of Edinburgh Gazette requirements),
- (f) section 25 (directions),
- (g) sections 26(1)(a), (2) and (3) and 27 (recall of sequestration),
- (h) section 34 (conversion of trust deed into sequestration),
- (i) sections 38 to 43 (review of decisions made by Accountant in Bankruptcy),
- (j) section 48 (renewal of inhibition period),
- (k) section 49 (division and sale of family home),
- (l) section 50 (effect of debtor discharge), and
- (m) in schedule 3—
  - (i) paragraph 3(a) (moratorium on diligence and register of insolvencies),
  - (ii) paragraphs 12 and 13 (expiry of inhibitory effect sequestration: recall),
  - (iii) paragraphs 25 and 26 (review by Accountant in Bankruptcy of adjudication of claims),
  - (iv) paragraph 31 (unclaimed dividends and unapplied balances), and
  - (v) paragraph 35(b), (c) and (e) (definitions of “common financial tool”, “DAS register”, “debtor contribution order” and “debtor’s contribution”).

(4) For the purposes of paragraph (1) the bankruptcy restrictions undertaking of a debtor is treated as sequestration of that debtor<sup>(1)</sup>.

### Money advice

5.—(1) A debtor application signed by the debtor before 1st April 2015 may be made on or after that date notwithstanding that the debtor has not obtained money advice in accordance with section 5C of the 1985 Act<sup>(2)</sup>.

(2) To that extent it is to be treated as an incomplete application under section 11A(1) of the 1985 Act<sup>(3)</sup>.

### Common financial tool

6.—(1) This article applies to sequestrations to which article 4(1)(a) or (b) applies, unless they meet the conditions under section 5A of the 1985 Act (low income, low asset debtors)<sup>(4)</sup>.

(2) Where an application is made on or after 1st April 2015 for variation of—

- (a) an income payment order, under section 32(4) of the 1985 Act; or
- (b) an income payment agreement, under section 32(4G)(b) of that Act on a change in the debtor's circumstances,

the sheriff must have regard to the common financial tool<sup>(5)</sup>.

(3) Where on or after 1st April 2015 a trustee is considering entering into a written agreement to vary an income payment agreement under section 32(4G)(a) of the 1985 Act on a change in the debtor's circumstances, the trustee must have regard to the common financial tool.

(4) In so applying the common financial tool, it is modified as follows—

- (a) regulations made under section 5D of the 1985 Act (assessment of debtor's contribution)<sup>(6)</sup> apply as if for any reference to variation or removal under section 32F of the 1985 Act<sup>(7)</sup> there were substituted a reference to variation or recall under section 32(4) of the 1985 Act; and
- (b) any provision of those regulations in pursuance of section 5D(3) to (6) of the 1985 Act (assessment of debtor's contribution) does not apply<sup>(8)</sup>.

(5) For the avoidance of doubt this article does not prevent a sheriff or trustee having regard to other factors, including the amount initially determined by the order or provided for in the agreement (or any extant variation of either).

(6) The introduction of the common financial tool is not itself a change in the debtor's circumstances for the purposes of this article (or section 32(4) of the 1985 Act).

### Moratorium on diligence

7. Notice received by the Accountant in Bankruptcy on or after 1st April 2015 which is—

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(1) Section 52 of and schedule 3, paragraph 3(b) and schedule 4 to the Act repeal provision for bankruptcy restrictions undertakings in Scotland.

(2) Section 5C is prospectively inserted by section 1 of the Act.

(3) Section 11A is prospectively inserted by section 10 of the Act.

(4) Section 5A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ("the 2007 Act"), section 15(2) and is repealed by schedule 4 to the Act.

(5) The common financial tool is made under section 5D of the 1985 Act inserted by section 3 of the Act.

(6) Inserted by section 3 of the Act.

(7) Inserted by section 4 of the Act.

(8) Equivalent provisions apply on the making or variation of an income payment order under section 32(2) of the 1985 Act, in section 32(2A) and (3) of that Act.

- (a) in accordance with section 4A(1) or 4B(1) of the 1985 Act<sup>(9)</sup> (notice of intention to apply for sequestration, protected trust deed for debt payment programme); and
- (b) in the form required under the 1985 Act from that date<sup>(10)</sup>,

has effect as if given on 1st April 2015 notwithstanding that it was given before that date.

### **Recall of sequestration**

**8.** Section 24(1) (replacement of Edinburgh Gazette recall requirement) of the Act does not apply to a petition for recall of sequestration presented before 1st April 2015.

### **Applications for trustee directions**

**9.** Section 25 of the Act (application for trustee directions) does not apply to any application to the sheriff for directions made before 1st April 2015 (and any appeal from any such direction).

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

**10.**—(1) The amendments in sections 38 to 42 of the Act (review of decisions by the Accountant in Bankruptcy) relevant to review by the Accountant in Bankruptcy of the following decisions of the Accountant in Bankruptcy do not apply—

- (a) to a determination notified before 1st April 2015 under section 13A(10)(b) (certificate of interim trustee discharge), or where notice is sent before that date under section 13B(4)(a) (iii) or (b) (discharge of Accountant in Bankruptcy as interim trustee), of the 1985 Act<sup>(11)</sup>,
- (b) to a direction given under section 18(1) (direction for interim preservation of estate) of the 1985 Act<sup>(12)</sup> before 1st April 2015,
- (c) to a refusal to award sequestration under section 15(3A) (debtor application) of the 1985 Act<sup>(13)</sup> before 1st April 2015,
- (d) where notice is sent before 1st April 2015 under section 26A(3) (discharge of Accountant in Bankruptcy as trustee) of the 1985 Act<sup>(14)</sup>,
- (e) to a determination notified before 1st April 2015 under section 27(3)(b) (certificate of original trustee’s discharge) of the 1985 Act<sup>(15)</sup>,
- (f) to claims accepted or rejected in a list sent before 1st April 2015, or notification given before that date, under section 49(2A) or (4) respectively (adjudication of claims) of the 1985 Act<sup>(16)</sup>, or
- (g) to a determination notified before 1st April 2015 under section 57(3)(b) (certificate of trustee discharge), or where notice is sent before that date under section 58A(4)(b) (discharge of Accountant in Bankruptcy as trustee), of the 1985 Act<sup>(17)</sup>.

(2) Sections 38 to 42 of the Act do not apply to any decision by the Accountant in Bankruptcy which is subject to court proceedings by way of appeal or review before 1st April 2015.

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<sup>(9)</sup> Section 4A and 4B are prospectively inserted by section 8 of the Act.

<sup>(10)</sup> See regulation 22 of the Bankruptcy (Scotland) Regulations 2014 (S.S.I. 2014/225).

<sup>(11)</sup> Sections 13A and 13B are amended by section 38(1) and (2) of the Act.

<sup>(12)</sup> Section 18 is amended by section 38(3) of the Act.

<sup>(13)</sup> Section 15(3A) was inserted by the 2007 Act, schedule 1, paragraph 13, and is substituted by section 39 of the Act.

<sup>(14)</sup> Section 26A(3) was inserted by the Bankruptcy (Scotland) Act 1993 (c.6) (“the 1993 Act”) and amended by the 2007 Act, schedule 1, paragraph 26(4). Section 26A is amended by section 40(1) of the Act.

<sup>(15)</sup> Section 27(3)(b) was amended by the 2007 Act, schedule 1, paragraph 27(1). Section 27 is amended by section 40(2) of the Act.

<sup>(16)</sup> Section 49(2A) was inserted by the 2007 Act, section 8(3). Section 49(4) was amended by the 2007 Act, schedule 6. Section 49 is amended by section 41 of the Act.

<sup>(17)</sup> Section 58A(4)(b) was inserted by the 1993 Act, Schedule 1, paragraph 25 and amended by the 2007 Act, schedule 6. Sections 57 and 58A are amended by section 42 of the Act.

**Power of trustee in relation to debtor’s family home**

**11.** Section 49 of the Act (procedure on power of trustee in relation to debtor’s family home) does not apply to any court proceedings commenced before 1st April 2015 (and any appeal in respect of those proceedings).

**Trust deeds granted before 1st April 2015**

**12.—(1)** Nothing brought into force by this Order except section 8 (moratorium on diligence) has effect as regards any trust deed granted before 1st April 2015.

(2) The 1985 Act as in force immediately before 1st April 2015, continues to apply and have effect in relation to any such trust deed.