

POLICY NOTE

THE BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 1 AND SAVING) ORDER 2014

SSI 2014/172 (C. 13)

The above instrument was made in exercise of the powers conferred by section 57(2) and (3) of the Bankruptcy and Debt Advice (Scotland) Act 2014(a) and all other powers enabling Ministers in that behalf.

Policy Objectives

1. The Scottish Government gave a commitment to modernise the bankruptcy system in Scotland, ensuring that the people of Scotland have access to the appropriate debt management/ relief mechanisms which will allow them to deal with the economic challenges society faces today.

2. As part of the modernisation programme, the Scottish Government introduced the Bankruptcy and Debt Advice (Scotland) Act 2014 (the 2014 Act) passed by the Scottish Parliament on 20 March 2014 and which received Royal Assent on 29 April 2014. The provisions of the 2014 Act enhance and add to current bankruptcy and debt management and debt relief legislation in Scotland, based on available evidence and consultation with stakeholders.

Commencement

3. Sections 54 (meaning of “the 1985 Act”), 55 (ancillary provision), 57 (commencement) and 58 (short title) of the 2014 Act came into force on 30 April 2014.

4. This instrument commences provisions for making regulations, orders or rules of court, amendments to the Debt Arrangement Scheme about non-natural persons, remuneration of office-holders, including minor and consequential amendments and repeals to the Bankruptcy (Scotland) Act 1985. It also brings into force section 44 of the 2014 Act (representation of the Accountant in Bankruptcy in the Sheriff Court).

5. Sections 1(2), 2, 4, 5, 7, 9(1), 17, 19, 21, 22, 23(1) and (3), 46, 48, and schedule 1, referred to in Article 2 of and the Schedule to this instrument are commenced on 30 June 2014 for the purposes of making SSI's only.

6. Section 44 (representation of the Accountant in Bankruptcy in the Sheriff Court) is also brought into force on that day. This ensures that persons authorised by the Accountant in Bankruptcy can appear before a Sheriff in court on the Accountant's behalf, and works together with the current court rules.

7. Sections 53 and paragraph 38 of schedule 3 to the 2014 Act referred to in article 3 are brought into force on 30 June 2014, but will not take effect until the powers under the amendments to the Debt Arrangement and Attachment (Scotland) Act 2002 to make provisions for the Debt Arrangement Scheme are used to amend the Debt Arrangement Scheme (Scotland Regulations).

8. Certain provisions commenced by article 2 are commenced for all purposes from 30 June 2014 where they relate only to making SSIs.

Consultation

9. The policy options in relation to the Bankruptcy and Debt Advice (Scotland) Act 2014 were subject of the “Bankruptcy Law Reform Consultation” <http://www.scotland.gov.uk/Publications/2012/02/6283n> published on 24th February 2012 and open until 18 May 2012. In addition to the consultation, a rolling number of stakeholder events were held throughout 2012-13. There has been no further consultation on the commencement of the provisions in the Bill by this Order as it merely brings into force provisions in the 2014 Act.

Impact Assessments

10. No impact assessments have been carried out in relation to this instrument as it merely brings into force provisions in the 2014 Act.

11. A copy of the Business and Regulatory Impact assessment for the Bill can be found on the Scottish Government website at:
<http://www.scotland.gov.uk/Resource/0042/00426999.pdf>

12. A copy of the and Equality Impact Assessment can be found on the Scottish Government website at:
<http://www.scotland.gov.uk/Resource/0042/00426418.pdf>

Financial Effects

13. A Financial memorandum was published for the Bankruptcy and Debt Advice (Scotland) Bill and can be found at :

[http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20\(Scotland\)%20Bill/b34as4-stage2-supp-fm.pdf](http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20(Scotland)%20Bill/b34as4-stage2-supp-fm.pdf)

The Accountant in Bankruptcy on behalf of the Scottish Government