POLICY NOTE

THE BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007 (COMMENCEMENT NO. 9 AND SAVINGS AMENDMENT) ORDER 2014

SSI 2014/173 (C. 14)

1. The above instrument was made in exercise of the powers conferred by sections 224(2) and 227(3) and (4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 ("the BAD Act 2007").

Policy Objectives

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

3. As part of the modernisation programme the Scottish Government considered provisions in the BAD Act 2007 which have yet to be commenced. The BAD Act 2007 introduced a number of changes to bankruptcy law in Scotland. The majority of these changes came into force on 1 April 2008. Details of the earlier commencement orders can be found in the note which accompanies this Order.

4. This instrument commences some of these provisions and amends the BAD Act 2007 (Commencement No 3, Savings and Transitionals) Order 2008.

Commencement

5. Article 3(a) of this Order commences, on 1 April 2015, section 25 of the BAD Act 2007, which amends section 5(2B)(a) and (4) of the Bankruptcy (Scotland) Act 1985, in relation to debtor applications for sequestration, insofar as section 25 is not already in force. It will align debtor applications for sequestration with creditor petitions for sequestration by increasing the minimum debt limit from £1500 to £3,000 as provided for in section 25 of the 2007 Act. Article 3(b) makes the same change for the definition of "qualified creditor".

6. The increase in the minimum debt limit for a debtor application will not apply to Scottish Charitable Incorporated Organisations (SCIOs). The minimum debt limit for SCIOs will remain at £1,500, by virtue of SSI 2011/237.

Amendment of savings arrangements

7. Article 4 amends, from 4 October 2014, the existing savings provisions for the BAD Act 2007 to clarify the abolition of the requirement to be resident in Scotland for replacement trustees for sequestrations petitioned for, or acting under trust deeds for the benefit of creditors granted before 1st April 2008. The requirements in section 24(2)(d) of and paragraph 5(a) of Schedule 5 to, the 1985 Act are abolished by sections 7 and 20 of the BAD

Act 2007 Act respectively and the Services Directive 2006/123/EC on services in the internal market[1].

8. In light of the Sheriff Court case of *Mond v Codona*[2] in relation to protected trust deeds, the amendments are considered helpful for users to make the position clear and to ensure there is no doubt that the residence requirements are not preserved.

Consultation

9. The policy options in relation to the provisions in the Bankruptcy and Diligence etc. (Scotland) Act 2007 were the subject of the 'Personal Bankruptcy Reform in Scotland: a modern approach' consultation, published on 19 November 2003. A second consultation on a draft Bankruptcy and Diligence Bill entitled 'Modernising Bankruptcy and Diligence in Scotland: draft Bill and Consultation', was published on 1 July 2004.

10. More recently the proposal to increase the minimum debt limit for debtor applications was restated in the 'Consultation on Bankruptcy Law Reform', published on 24 February 2012. The majority of respondents supported this proposal.

Impact Assessment

11. Impact assessments have not been completed in relation to this instrument as it merely brings into force provisions of primary legislation which have already been scrutinised during the parliamentary process.

Financial Effects

12. No material additional costs on the Scottish Government, local government or on business are envisaged as a result of these provisions.

The Accountant in Bankruptcy on behalf of Scottish Government

June 2014

[1] O.J. L 376, 27.12.2006, p.36.
[2] Kilmarnock Sheriff Court, 20 June 2013