POLICY NOTE

THE BANKRUPTCY AND DILIGENCE (SCOTLAND) ACT 2024 (CONSEQUENTIAL AMENDMENTS AND FORMS) REGULATIONS 2025

SSI 2025/145

The above instrument has been made in exercise of the powers conferred on the Scottish Ministers by sections 116(2), 147A(3), (5)(a) and (6)(b) and 224(1) of the Bankruptcy (Scotland) Act 2016 (the "2016 Act") and section 21(1) of the Bankruptcy and Diligence (Scotland) Act 2024 (the "2024 Act"). The instrument is laid and subject to negative procedure.

Summary

Purpose of the instrument: These Regulations will accompany The Bankruptcy and Diligence (Scotland) Act 2024 (Commencement No. 2, Transitional and Saving Provisions) Regulations 2025 to bring into force the consequential amendments required as a result of the commencement of sections 4 and 12 of the 2024 Act. They will make amendments to the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016/295 (the "Applications and Decisions Regulations") and make provision for three new prescribed forms to be inserted into schedule 1 of the Bankruptcy (Scotland) Regulations 2016 in support of the commencement of section 12 of the 2024 Act.

Policy Objectives

This instrument is the Bankruptcy and Diligence (Scotland) Act 2024 (Consequential Amendments and Forms) Regulations 2025 (the "Consequential Regulations"). These Consequential Regulations bring into force the consequential amendments required with commencement of sections 4 and 12 of the 2024 Act. The Bankruptcy and Diligence (Scotland) Act 2024 (Commencement No. 2, Transitional and Saving Provisions) Regulations 2025 were laid on 3 April 2025 . These Regulations brought parts of section 12 of the 2024 Act into force on 17 April 2025 for the limited purpose of enabling the Scottish Ministers to make Regulations under the inserted section 147A(3), (5)(a) and (6)(b) of the 2016 Act . Sections 4, 5, 11 and 12 (so far as not already in force) of the 2024 Act will be brought into force on 25 June 2025, which is the same date these Consequential Regulations will come into force.

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.

Amendment to regulation 9 of the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016/295

The commencement of section 4 of the 2024 Act will result in modifications to the process for applying for a recall of award of sequestration under the 2016 Act. This will subsequently

require a consequential change to regulation 9(4) and the removal of regulation 9(5) in the Applications and Decisions Regulations in order to avoid any ambiguity regarding the procedure to follow where the Accountant in Bankruptcy ("AiB") is the trustee and acts on its own accord in proposing recall of an award of sequestration on the basis the debtor has paid, or is able to pay, their debts in full. The consequential change to the Application and Decisions Regulations will bring the notification process in this scenario in line with the notification process when an application for recall is made to AiB by another party. The Applications and Decisions Regulations set out the procedure for making applications to, and decisions by, the AiB.

Where AiB grants recall on its own accord, section 4 of the 2024 Act modifies the 2016 Act so that section 35 of the 2016 Act will detail the notification requirements for AiB. However, this process is also covered by regulations 9(5) of the Applications and Decisions Regulations. Therefore, to avoid any uncertainty as to which part of legislation covers the notification process in this scenario, the removal of regulation 9(5) is required.

Section 4 of the 2024 Act now extends section 35(2) of the 2016 Act to make provision for when AiB receives an application for recall. An amendment is therefore required to regulation 9(4) of the Application and Decisions Regulations to make specific reference that a statement of the debtor's affairs is sent out with the notification for recall where AiB is acting of its own accord and considers recall may be granted on the ground that the debtor has paid, or is able to pay, their debts in full.

Prescribed forms

The commencement of section 12 of the 2024 Act (failure of debtor to co-operate with trustee in sequestration) will allow the original trustee to seek their resignation from office and for AiB to be appointed as the new trustee in a case where the debtor has failed to co-operate.

Section 12 makes provision for three prescribed forms to be inserted into schedule 1 of the Bankruptcy (Scotland) Regulations 2016. These forms will be required to support the process for the trustee to apply to AiB for authority to resign from office.

The consequential amendments will allow for the provision of the following prescribed forms:

- A form for the trustee to apply to AiB for authority to resign from office on account of the debtor's failure to cooperate;
- A form which acts as the intention to resign notice, which the trustee must use to notify the debtor and every creditor known to the trustee; and
- A form which acts as the notice from AiB granting the trustee's application.

EU Alignment Consideration

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

Consultation

As these Consequential Regulations provide for consequential amendments as a result of bringing 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.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Bankruptcy and Diligence (Scotland) Act 2024 (Consequential Amendments and Forms) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of that Act.

Impact Assessments

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

- Business and Regulatory impact assessment
- Child Rights and Wellbeing screening template
- Equalities impact assessment results document
- Fairer Scotland Duty impact assessment
- Island Communities impact assessment

A Business and Regulatory Impact Assessment and Child Rights and Wellbeing Impact Assessment have been completed on the effects of the instrument and were published when this instrument was laid before the Parliament. A copy can be found on www.legislation.gov.uk.

No equality issues were raised during the Equality Impact Assessment framing exercise and it is considered that a full Equality Impact Assessment is not required. There were no direct or indirect barriers found as a result of the proposed changes being introduced. The changes introduced will simply clarify processes required for the amendments made to the 2016 Act as a result of the commencement of sections 4 and 12 of the 2024 Act.

In view of the Fairer Scotland Duty regarding socio-economic inequalities under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered and no impact has been identified. The changes being introduced are not considered to be strategic and are instead small but necessary changes to clarify processes.

No policy issues were identified during the course of the development of these Consequential Regulations, or from the stakeholder discussion, which would have an effect on an island community which was significantly different from the effect on other communities (including other island communities). It was therefore not considered necessary to conduct an Island Communities Impact Assessment.

Financial Effects

A Business and Regulatory Impact Assessment has been completed. The changes introduced by this instrument are not expected to have any significant financial impact on the Scottish Government.

The changes introduced by this instrument will not result in costs to the Scottish Government. Any costs in the development of forms being introduced by these Consequential Regulations will be absorbed in the normal business running costs.

Accountant in Bankruptcy
2025