POLICY NOTE

THE BANKRUPTCY AND PROTECTED TRUST DEEDS (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2017

SSI 2017/Draft

The above Regulations are made by the Scottish Ministers in exercise of the powers conferred by sections 48(1)(a), 51(14), 54(4), 126(5), 138(2), 140(2), 170(1)(e), 175(1), 183(1)(a) and (b), 194(1), 224(1) and 225(2) of the Bankruptcy (Scotland) Act 2016 and all other powers enabling them to do so. They are subject to the affirmative procedure.

Policy Objectives

1. The policy objective of these Regulations is to amend minor errors in the Bankruptcy (Scotland) Regulations 2016 and the Protected Trust Deeds (Forms) (Scotland) Regulations 2016.

2. These Regulations were introduced as part of the exercise to consolidate the secondary legislation under the Bankruptcy (Scotland) Act 2016 ("the 2016 Act"). The 2016 Act was a Consolidation Bill to consolidate the Bankruptcy (Scotland) Act 1985 and subsequent amendments, including the rules on protected trust deeds for the benefit of creditors, following Scottish Law Commission ("SLC") recommendations. There were no changes in policy and the aim was to bring bankruptcy legislation into one place to make it more accessible for practitioners and the general public. The 2016 Act and the package of consolidated Regulations came into force on 30 November 2016.

3. A number of minor errors were identified during the Parliamentary process and it was agreed to amended these at the next legislative opportunity or by amending instrument. These Regulations also seek to amend other minor points raised by stakeholders, as summarised in the Annex.

Background

4. In their 8th programme of Law Reform, the SLC, at the suggestion of the Accountant in Bankruptcy ("AiB"), undertook a project to consolidate the legislation relating to bankruptcy in Scotland. The majority of the legislation proposed for consolidation was contained in the 1985 Act which had been heavily amended and so lost its coherence and structure. Many provisions were inordinately long and numbering had become complex and unwieldy. The primary aim was to make it more readable and accessible for practitioners and those affected by it. The 2016 Act received Royal Assent on 28 April 2016.

5. The next stage of the exercise consolidated the following SSIs as amended:-
    - the Bankruptcy (Scotland) Regulations 2014
    - the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010
    - the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014
    - the Common Financial Tool etc. (Scotland) Regulations 2014

- the Protected Trust Deeds (Scotland) Regulations 2013
- the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2014
- The Bankruptcy Fees (Scotland) Regulations 2014

6. The consolidation reduced these to 4 sets for sequestration and Protected Trust Deeds under the new Bankruptcy (Scotland) Act 2016:-
    - the Bankruptcy (Scotland) Regulations 2016
    - the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016
    - the Protected Trust Deeds (Forms) (Scotland) 2016 – the provisions in relation to Protected Trust Deeds have been consolidated into the 2016 Act, only the forms remain in regulations.
    - the Bankruptcy Fees (Scotland) Regulations 2014[1] continue to apply to all sequestrations under savings and continuity of law provisions in sections 234(3) and 235(1), (2) and (4) of the 2016 Act but are due to be replaced with Bankruptcy (Scotland) Regulations 2016 from 3 April 2017 following a review of the current fee levels.

7. Tables of Destinations and Derivations identifying the corresponding provisions in the 1985 Act and in the 2016 Act are available for the Bankruptcy (Scotland) Act 2016, as well as for the Bankruptcy (Scotland) Regulations 2016[2].

Consultation

8. AiB worked closely with stakeholders who have provided valuable feedback on the proposals for consolidation. This goes back to August 2011, when the SLC initially published a "Consolidation of the Bankruptcy Legislation in Scotland" consultation paper, on their recommendations. The resulting SLC recommendations were implemented by the Bankruptcy and Debt Advice (Scotland) Act 2014 and the 2016 Act.

9. There was extensive engagement with key stakeholders during the passage of the consolidating 2016 Act and Regulations. The Delegated Powers and Law Reform Committee (DPLRC) took evidence from ICAS and the R3 Technical Committee who were broadly supportive of the consolidation Bill and Regulations. Technical points ICAS and R3 have made are taken into account in this instrument.

Impact Assessments

10. A Business and Regulatory Impact Assessment (BRIA) has not been completed as these Regulations are only amending minor errors. A BRIA was completed and published during the consolidation exercise.

11. An Equality Impact Assessment (EQIA) has not been carried out as these Regulations purely amend minor errors. Existing legislation was previously subject to an EQIA and highlighted no issues.

---

1 SSI 2014/227 as amended by SSI 2015/80.
2 https://www.aib.gov.uk/bankruptcy-scotland-act-2016-tables-derivations-and-destinations-draft and http://www.legislation.gov.uk/ssi/2016/397/pdfs/ssipn_20160397_en.pdf

Financial Effects

12. AiB previously considered the financial impact of the consolidation in the 2016 Act and associated Regulations on firms. No financial impact is anticipated as these Regulations amend minor errors (and are being issued free of charge to recipients of the instruments amended).

The Accountant in Bankruptcy on behalf of the Scottish Government
February 2017

Annex

Specific Amending Provisions

Bankruptcy (Scotland) Regulations 2016

Regulation 2(2) - substitutes regulation 22 of the Bankruptcy (Scotland) Regulations 2016 to read "For the purposes of sections 48(1)(a) and 126(5) of the Act, the manner of conversion into sterling of the amount of a claim stated in foreign currency is to be at a single exchange rate **for** that currency determined by the trustee with reference to the exchange rates prevailing at the close of business on the date of sequestration." This is due to the typographical error "a single exchange rate **of for** that currency...".

Regulation 2(3)(a) – amends the Statement of Undertakings in Form 1 to read "2. I have made a full disclosure of all assets which I owned or in which I had an interest on my bankruptcy **application** date." This reflects that at the time of making an application, the debtor will not know the date their application for bankruptcy will be awarded.

Regulation 2(3)(b) – amends the Statement of Undertakings in Form 13 to read "11. I understand that any assets acquired and which would have vested in my trustee if they had been part of my estate at that **date** will vest in my trustee and any such assets which have not been sold, realised or ingathered by my trustee, will continue to vest in my trustee notwithstanding my discharge. This fixes the omission of the word "date".

Regulation 2(3)(c) – amends the title of the notes page in Form 26 to read "Debtor certificate of discharge **(where the Accountant in Bankruptcy is the trustee)**". The third bullet in that notes page will also be amended to read "any liability to pay a fine imposed in a **justice of the peace court** or district court" as "justice of the peace court" was omitted in error.

Regulation 2(3)(d) – amends Form 27 to read "I certify that [debtor name and address] whose estate was sequestrated on [dd/mm/yyyy], is discharged under section 140(1) of the Bankruptcy (Scotland) Act 2016" rather than referring to "the Bankruptcy (Scotland) Act 1985 (as amended)".

Protected Trust Deeds (Forms) (Scotland) Regulations 2016

Regulation 3(2)(a) and **regulation 3(2)(d)** – amends the Table of forms in the schedule and the heading in Form 3 of the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 to refer to "Bankruptcy (Scotland) Act 2016 Section **171(1)**(i) rather than "...170(1)(i)...".

Regulation 3(2)(b) – amends the third bullet of Form 1B to read "recall any notice of inhibition, which I have caused to be recorded in the register **of** inhibitions…". This removes the typographical error "register **if** inhibitions".

Regulation 3(2)(c) – amends the notes on Form 2 to read "It is important that you keep the trustee of this trust deed informed of any changes to your contact details. Failure to **do** so may mean the trustee is unable to contact you if he/she wants to make a payment to you from this trust deed." This fixes the omission of the word "do".