

All Trustees  
By email only

Our Ref CL/PD/2016Act

Date 18 October 2016

Dear Trustee

### Bankruptcy (Scotland) Act 2016

As you will be aware, the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”) is scheduled to come into force on 30 November 2016. This consolidates the Scots law of bankruptcy and protected trust deeds (PTDs).

Practitioners will be familiar with the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) which has been much amended over the years. While this pure consolidation doesn’t change the underlying bankruptcy law, it results in a cleaner Act with far fewer sub-sections. Practitioners will have to familiarise themselves with new numbering and structure and a useful resource in drawing comparison between the existing and new Acts is found in the detailed [Tables of Derivations and Destinations](#) which are published on the AiB web-site.

Although the 2016 Act does not introduce any new policy, I thought it may be helpful to set out the following key areas in relation to the implementation of the new Act and the impact on existing cases as at the date of commencement.

The 2016 Act repeals the 1985 Act in full and a major structural change is brought about in Part 14 by writing the legal framework for PTDs back into primary legislation, thereby replacing the Protected Trust Deeds (Scotland) Regulations 2013 (SSI 2013/318 as amended). This will be supplemented by slimmed down PTD Regulations which are expected to come into force on 30 November 2016 and are currently being considered by the Scottish Parliament’s Delegated Powers & Law Reform Committee (DPLRC).

Although the 1985 Act is repealed, sections 234 and 236 of the 2016 Act contain some important savings and transitional arrangements which are summarised as follows.

### Transitional Arrangements

- The 2016 Act will apply to sequestrations petitioned for, or applied for, on or after 30 November 2016 (sections 234(3) and 236 refer). This means that the administration of any sequestration in force prior to petitions presented or applications made before 30 November 2016 will continue to be administered under the 1985 Act.
- The PTD provisions which are laid out in Part 14 of the 2016 Act will apply to trust deeds granted on, or after, 30 November 2016 (sections 162 and 234(3)) refer. This means that any PTDs that were granted prior to 30 November 2016 will continue under the Protected Trust Deeds (Scotland) Regulations 2013 (SSI2013/318 as amended).

### Bankruptcy Regulations

The regulations which fall under the 1985 Act are also being consolidated and will apply to sequestrations which are petitioned or applied for on, or after, the 30 November 2016.

Draft Bankruptcy (Scotland) Regulations 2016, which incorporate the common financial tool and money advice provisions have been laid in draft in the Scottish Parliament and will be subject to scrutiny by the DPLRC. The draft Bankruptcy (Applications & Decisions) Regulations which incorporate AiB decision and review procedures will remain similar to current regulations of the same name, albeit with amended legislative references. We will provide a further updates on the revised regulations as they progress through the Parliamentary process.

I hope this is useful, however, if you would like any additional information, please do not hesitate to contact me.

Yours faithfully

Carol Kirk