

These notes relate to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) which received Royal Assent on 15 January 2007

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 1 – Bankruptcy

Debtor applications

Section 15 – Debtor applications by low income, low asset debtors

59. Section 15(1) of this section inserts into section 5(2B)(c) of the 1985 Act an additional criteria under which a debtor can apply to the AiB for sequestration. The new criterion is that the debtor is unable to pay his or her debts and meets the conditions listed in new section 5A of the 1985 Act. Note, however, that the new criteria is additional to the existing requirements of sub-section (2B) of section 5 of the 1985 Act, and debtor will therefore still have to satisfy the qualifying debt limit threshold and the bar on being sequestrated twice in any 5-year period as set out in paragraphs (a) and (b) of that subsection.
60. Subsection (2) inserts new section 5A into the 1985 Act.

New section 5A – Debtor applications by low income, low asset debtors

61. Section 5A sets out the conditions under which the new criteria in section 5(2B)(c) will be met. The conditions are set out in subsections (2) to (4) and generally relate to the debtor having a low level of income and a minimal amount of assets. Subsection (5) gives the Scottish Ministers the power to make regulations setting out what income and assets are to be included and how they are to be determined for the purposes of subsections (2) to (4). It also provides the power to add further conditions and to vary or remove those further conditions. The power in subsection (5) is subject to the affirmative resolution procedure of the Scottish Parliament (see new section 72(2) and (3) of the 1985 Act as inserted by section 35 of this Act).