

GEBBIE & WILSON NEWSLETTER

APRIL 2008.

BANKRUPTCY AND DILIGENCE ETC (SCOTLAND) ACT 2007

The 2007 Act.

This Act of the Scottish Parliament amends the law relating to sequestration and personal solvency. The Act establishes a Scottish Civil Enforcement Commission and creates the office of Judicial Officer to replace officers of the Court. It also amends the law relating to floating charges and the law of Diligence.

The Act is intended to create:

“an integrated system of debt management and debt relief with clear remedies for creditors and clear protections for debtors and no unnecessary overlap so that we can get rid of any duplication that exists”

Andy Crawley: Scottish Executive Justice Department.

Different Sections of the Act are due to come into force on different appointed days. Many of the new regulations come into force on 1st April 2008, including the new limits applied to sequestration and bankruptcy.

1st April 2008.

Debt Limits in Sequestration and Bankruptcy.

New debt limits in sequestration and personal solvency came into force on 1st April 2008.

Section 5 (2B)(a) and (4) of the Bankruptcy (Scotland) Act 1985 relating to Sequestration of the estate of living or deceased debtor has been amended by the Bankruptcy and Diligence Etc (Scotland) Act 2007.

Under the new regulation, the total amount of the debtors debts (including interest) at the date the debtor application is made must be **NO LESS than £3,000** or such sum as may be prescribed. This has doubled from the previous limit of £1,500. Clearly, this will restrict the option of the creditor to sequester in cases where this option would have previously been available.

It is important to note that the new limit is effective from **1st April 2008**. However, the 1985 Act shall still apply and have effect in relation to any sequestration petition or trust deed granted prior to that date.

It is expected that the new £3,000 limit will rise further in the future, Alex Salmond having been noted as stating that the new limits are still “too low”.

Continuation of Sequestration Proceedings.

As you may be aware, it has previously been incompetent to continue sequestration proceedings. Section 27 of the 2007 Act brings a change to the rules relating to continuation of sequestration proceedings.

It is now the case that the Sheriff may continue the Petition in some circumstances.

Where the Sheriff is satisfied that the debtor shall, before the expiry of the period of 42 days beginning with the day on which the debtor appears before the sheriff, pay or satisfy:

- a) the debt in respect of which the debtor became apparently insolvent and
- b) any other debt due by the debtor to the Petitioner and any creditor concurring in the Petition

the Sheriff may continue the Petition for a period no longer than **42 days** (6 weeks).

Where the Sheriff is satisfied that:

- a) a debt payment programme relating to:
 - 1) the debt in respect of which the debtor became apparently insolvent.And
- 2) any other debt due by the debtor to the Petitioner and any creditor concurring in the Petition.

has been applied for and has not yet been approved or rejected

OR

b) such a debt payment programme will be applied for
the Sheriff may continue the Petition for any such period as he thinks fit.

Clearly, these changes will have an effect on Creditors in terms of the restriction of the option to move for sequestration and the time scales involved.