The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Helen Webster
Head of Cabinet, Parliament and Governance Division
Scottish Government

Email only

T1.01
Chamber Office
EDINBURGH
EH99 1SP

DPLR.Committee@parliament.scot

7 June 2023

Dear Helen,

Bankruptcy and Diligence (Scotland) Bill

At its meeting on 6 June, the Delegated Powers and Law Reform Committee considered the delegated powers in the above Bill.

It agreed to write to you in relation to **Section 1(1): Moratorium on debt recovery action: debtors who have a mental illness.**

The Committee noted that supporting documentation to the Bill makes it clear that the moratorium is intended to be temporary. The DPM explains that "in the debt context, a moratorium generally prohibits creditors from taking specific actions to recover monies owed by the debtor. The measure does not extinguish the debt, but simply defers the creditor's ability to recover the monies owed." It would therefore appear that the intention is that the debtor will still be obliged to pay down the debt and existing debt recovery actions will remain available to creditors after the moratorium period has expired. Nevertheless, the delegated power in section does not require the regulations to specify a time limit. Subsection (2) sets out the matters that regulations under this section may include provision about, including: "(d) the time period for which the moratorium is to apply". However, Scottish Ministers are not obliged to set a time limit in any regulations which they may bring forward.

The Policy Memorandum explains that there is already one statutory moratorium on diligence available in Scots law, which is provided for in Part 15 of the Bankruptcy (Scotland) Act 2016. Part 15 introduced a six-week moratorium which protected debtors from their creditors while they took advice and considered what debt relief options might be available to them. Applications for the moratorium could only be made once in any 12-month period.

The Coronavirus (Scotland) Act 2020 made two significant changes to that moratorium: - it increased the time period from six weeks to six months and suspended the limitation on multiple applications during any 12-month period. Those provisions expired on 30 September 2021.

On 1 October 2022, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 again increased the length of the moratorium against diligence created by Part 15 of the Bankruptcy (Scotland) Act 2016 from 6 weeks to 6 months. The Act also gave Scottish Ministers the power to vary the moratorium period through regulations. Ministers have committed to reviewing the length of the moratorium when the cost-of-living crisis is over.

Each time a moratorium on diligence has been provided for, the maximum duration of the moratorium has been set out on the face of the primary legislation. That is not the case in the current Bill. Given that (i) the duration of the moratorium is central to its operation, and (ii) the duration of the existing moratorium on diligence has previously been specified on the face of primary legislation, the Committee is asking Scottish Government:

> (i) why the Scottish Government has not specified the length of the proposed mental health moratorium on the face of this Bill;
>
> (ii) in absence of such specification, what the Scottish Government's intentions are regarding the time period for which the moratorium is to apply; and
>
> (iii) why the power to set a time period in regulations is discretionary rather than mandatory.

I would be grateful if you could email your response to the Delegated Powers and Law Reform Committee email address above by Wednesday 14 June 2020.

Yours sincerely

Greg Black
Clerk to the Delegated Powers and Law Reform Committee