

Bankruptcy and Diligence (Scotland) Bill — Stage 2

Section 1

Paul O'Kane

18 In section 1, page 1, leave out lines 5 to 9 and insert—

- <(1) A moratorium on debt recovery action by creditors against individuals who are receiving mental health crisis treatment is established.
 - (1A) An individual is receiving mental health crisis treatment when the debtor—
 - (a) has been detained in hospital for assessment or treatment of mental illness,
 - (b) has been removed to a place of safety by a police officer for reasons related to mental health,
 - (c) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service.
 - (1B) Any of the following persons may submit an application to the Accountant in Bankruptcy for a mental health crisis moratorium in relation to a debtor—
 - (a) the debtor,
 - (b) the debtor's carer,
 - (c) an approved mental health professional,
 - (d) a social worker.
 - (1C) The application must include the following information—
 - (a) sufficient information to identify the debtor, and
 - (b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.
 - (1D) The time period for which the moratorium applies—
 - (a) starts on the day following the day on which the Accountant in Bankruptcy approves an application under subsection (1B), and
 - (b) ends on the day that is 30 days after the day on which the debtor stops receiving mental health crisis treatment.
 - (1E) The Scottish Ministers may by regulations make further provision about a mental health moratorium which may (among other things) include provision about—>

Paul O'Kane

19 In section 1, page 1, leave out lines 14 and 15

Daniel Johnson

20 In section 1, page 1, line 28, at end insert—

- <() Before making regulations under subsection (1), the Scottish Ministers must consult—
 - (a) debt advice agencies,
 - (b) such other persons as they consider appropriate.>

After section 1

Daniel Johnson

21 After section 1, insert—

<Moratorium on debt recovery action: pre-laying procedure

- (1) Before laying regulations to make provision establishing a moratorium on debt recovery action by creditors against individuals who have a mental illness, the Scottish Ministers must—
 - (a) lay a draft of the regulations before the Scottish Parliament for a period of 120 days, of which no fewer than 60 days must be days which the Scottish Parliament is not dissolved or in recess, and
 - (b) before finalising the regulations, seek the views of a committee of the Scottish Parliament whose remit includes matters relating to the moratorium on debt recovery action for the time being appointed by virtue of the standing orders.
- (2) The Scottish Ministers must, when laying regulations to establish a moratorium on debt recovery action under section 1, lay a statement setting out—
 - (a) details of the views mentioned in subsection (1)(b), and
 - (b) the changes (if any) they have made to the regulations in response to such views and the reasons for those changes.>

Paul O'Kane

22 After section 1, insert—

<Debt arrears: creditor pre-action requirements

Debt arrears: creditor pre-action requirements

- (1) The Scottish Ministers must by regulations make provision for pre-action requirements, where—
 - (a) the creditor intends to take debt recovery action,
 - (b) the creditor is a local authority, and
 - (c) the debtor is an individual.
- (2) Regulations under subsection (1) may (among other things) include provision about—
 - (a) the information a creditor must provide to a debtor including the amount of debt owed to a creditor and a debt advice and information package,
 - (b) the reasonable efforts a creditor must take to agree with a debtor a reasonable plan to make payments to a creditor,
 - (c) the reasonable consideration a creditor must give to—
 - (i) the ability of a debtor to make payment of debt to a creditor within a reasonable time,
 - (ii) the extent to which a debtor has complied with the terms of any plan agreed to in accordance with paragraph (b), and

(iii) any changes to a debtor’s circumstances which are likely to impact on the extent to which a debtor complies with the terms of a plan agreed to in accordance with paragraph (b).

(3) Regulations under subsection (1) are subject to the affirmative procedure.>

Paul O’Kane

23 After section 1, insert—

<Debt arrears: creditor pre-action requirements

Debt arrears: creditor pre-action requirements

- (1) The Scottish Ministers must by regulations make provision for pre-action requirements, where—
- (a) the creditor intends to take debt recovery action,
 - (b) the creditor is a local authority, and
 - (c) the debtor is an individual.
- (2) Regulations under subsection (1) may (in particular) make provision about—
- (a) information to be provided by a creditor to a debtor in relation to the debt,
 - (b) steps to be taken by a creditor to refer the individual to income maximisation services,
 - (c) steps to be taken by a creditor with a view to seeking to agree arrangements with a debtor for future payment of debt and any other outstanding financial obligation,
 - (d) such other matters as the Scottish Ministers consider appropriate.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.>

Before section 2

Daniel Johnson

24 Before section 2, insert—

<Debt advice and information package

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 3 (debt and advice information package), after subsection (1), insert—
- “(1A) The provision of a debt advice and information package to the debtor under subsection (1) must be accompanied by an offer by the qualified creditor to discuss the information contained in the debt advice and information package.
 - (1B) Where a qualified creditor is unable to discuss the debt advice and information package under subsection (1A), the creditor must offer an alternative contact to provide that information and advice.”.
- (3) In section 167 (statements in and advice regarding trust deed), in subsection (3)(b), after “package,” insert—
- “(ba) the trustee must offer to discuss the information contained in the debt advice and information package with the debtor,”;>

After section 5

Colin Smyth

25 After section 5, insert—

<Funds attached

Funds attached

- (1) Part 3A of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In section 73E (funds attached), after subsection (6), insert—
 - “(7) An arrestment to which this section applies shall not attach any funds wholly acquired through social security benefits.
 - (8) Where a creditor is satisfied that attached funds are wholly social security benefits, the creditor should instruct the arrestee to release the funds.
 - (9) For the purposes of subsection (7), social security benefits includes payment of any benefits provided by—
 - (a) the Welfare Reform Act 2012,
 - (b) the Social Security Administration Act 1992,
 - (c) the Jobseekers Act 1995,
 - (d) the State Pension Credit Act 2002,
 - (e) the Tax Credits Act 2002,
 - (f) the Welfare Reform Act 2007,
 - (g) the Social Security (Scotland) Act 2018, and
 - (h) the Social Security Contributions and Benefits Act 1992.
 - (10) Where subsection (8) applies and funds have been attached by the arrestee in good faith, the arrestee is not liable to the debtor or to any other person having an interest in the funds for damages or patrimonial loss caused by the attachment or any subsequent release of funds.”>

Section 6

Paul O’Kane

26 In section 6, page 4, line 31, at end insert—

- <() In section 73F (protection of minimum balance in certain bank accounts), after subsection (6), insert—
- “(7) Before the end of each financial year, the Scottish Ministers must—
 - (a) calculate the inflation-adjusted level of the protected minimum sum mentioned in subsection (3)(a), and
 - (b) bring forward regulations to replace the protected minimum sum where, in their opinion, the sum is materially below its inflation-adjusted level with a figure of at least that level (subject to any rounding they think appropriate).

- (8) Regulations under subsection (7) are subject to the affirmative procedure.”>

Section 8

Daniel Johnson

- 27 In section 8, page 7, line 12, after <package> insert <and offered to discuss this information with the debtor or, where unable to discuss this information with the debtor, provided an alternative contact>

Daniel Johnson

- 28 In section 8, page 7, line 20, after <package> insert <or given the debtor the opportunity to discuss the information contained in the debt advice and information package with either the creditor or an alternative contact provided by the creditor,>

After section 8

Paul O’Kane

- 29 After section 8, insert—

<Recovery of rates

Recovery of rates

- (1) Section 247 (recovery of rates) of the Local Government (Scotland) Act 1947 is modified as follows.
- (2) After subsection (5), insert—
 - “(5A) It shall not be competent for a summary warrant to include a surcharge as mentioned in subsection (2) where the person is in receipt of—
 - (a) Council Tax Reduction,
 - (b) Scottish Child Payment.”>.

After section 10

Daniel Johnson

- 30 After section 10, insert—

<Review: debt advice and information package

Review: debt advice and information package

- (1) The Scottish Ministers must, within 3 years of Royal Assent, review the impact of the debt advice and information package in providing support to individuals experiencing debt recovery action.
- (2) The review must consider—
 - (a) the experience of debtors using the debt advice and information package, and

- (b) whether other assistance should be offered alongside the provision of a debt advice and information package, including providing advice—
 - (i) in person,
 - (ii) by telephone,
 - (iii) by online video call,
 - (iv) through instant messaging.
- (3) The Scottish Ministers must prepare and publish a report on the review under subsection (1).
- (4) The report under subsection (3) must set out, in particular, any steps that the Scottish Ministers propose to take as a result of the review. >