

# Bankruptcy and Diligence (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

# Bankruptcy and Diligence (Scotland) Bill

## [AS PASSED]

An Act of the Scottish Parliament to make provision to establish a mental health moratorium; to modify the Bankruptcy (Scotland) Act 2016; and to modify the law of diligence.

### *Mental health moratorium*

#### **1 Moratorium on debt recovery action: debtors who have a mental illness**

- 5 (1) The Scottish Ministers must by regulations make provision establishing a moratorium on debt recovery action by creditors against individuals who have a mental illness.
- (2) Regulations under subsection (1) may (among other things) include provision about—
- 10 (a) the eligibility criteria, or conditions, which must be met for the moratorium to apply in relation to an individual,
- (b) the types of debts in respect of which the moratorium applies,
- (c) the process for determining if the eligibility criteria, or conditions, are met (for example, by conferring functions on a person or persons of a description specified in the regulations),
- 15 (d) the time period for which the moratorium is to apply in relation to an individual (“the moratorium period”),
- (e) the actions creditors must, may or may not take during the moratorium period in relation to an individual who is the subject of the moratorium and the consequences (if any) for creditors for taking or failing to take such actions,
- 20 (f) the obligations on an individual who is the subject of the moratorium during the moratorium period,
- (g) the arrangements for the recording of, and access to, information that the moratorium is applying in relation to an individual,
- (h) appeals against decisions made under the regulations,
- 25 (i) the obligations, or restrictions, on an individual or creditors following the end of the moratorium period.
- (3) Regulations under this section may—
- (a) make different provision for different purposes,
- (b) modify any enactment,

(c) include incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) Regulations under this section are subject to the affirmative procedure.

### **1A Procedure for first regulations under section 1**

(1) The Scottish Ministers must, before laying a draft of a Scottish statutory instrument containing the first regulations under section 1 before the Scottish Parliament—

(a) lay a copy of the proposed draft regulations before the Scottish Parliament for a period of 60 days,

(b) have regard to any representations about the proposed draft regulations that are made to them.

(2) When laying a draft of a Scottish statutory instrument containing the first regulations under section 1, the Scottish Ministers must also lay before the Scottish Parliament a statement setting out—

(a) details of any representations mentioned in subsection (1)(b),

(b) the changes (if any) they have made to the regulations in response to such representations and their reasons for making them.

(3) In calculating any period of 60 days for the purposes of subsection (1), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

### **1B Review of mental health moratorium**

(1) The Scottish Ministers must, as soon as reasonably practicable after the end of the review period—

(a) undertake a review of the operation of the mental health moratorium established under section 1,

(b) prepare a report on that review.

(2) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—

(a) publish the report, and

(b) lay the report before the Scottish Parliament.

(3) For the purposes of this section, “the review period” is the period of 5 years beginning with the day on which the first regulations under section 1 come into force.

## *Modification of the Bankruptcy (Scotland) Act 2016*

### **2 Process for applying for recall of an award of sequestration**

(1) Part 2 of the Bankruptcy (Scotland) Act 2016 is modified as follows.

(2) In section 29 (petitions for recall of sequestration), in subsection (4)—

(a) in paragraph (a), after “debtor” insert “(where the debtor is not the petitioner)”,

(b) in paragraph (b), after “any” insert “other”,

(c) in paragraph (c), after “trustee” insert “(where the trustee is not the petitioner)”,

(d) in paragraph (d), after “AiB” insert “(where AiB is not the petitioner)”.

(3) In section 31 (application to Accountant in Bankruptcy for recall of sequestration)—

(a) in subsection (3), in the opening words, before “persons” insert “other”,

(b) in subsection (4)—

(i) in paragraph (a), the words “(where the debtor is not the applicant)” are repealed,

(ii) in paragraph (c), after “trustee” insert “(where AiB is not the trustee)”,

(c) in subsection (5)—

(i) after “granted” insert “—

(a) where AiB is not the trustee.”,

(ii) at the end insert—

“(b) where AiB is the trustee, under section 35(6) (subject to any conditions imposed under section 35(6B)).”.

(4) In section 32 (application under section 31: further procedure)—

(a) for subsection (1) substitute—

“(1) This section applies where—

(a) an application is made under section 31, and

(b) AiB is not the trustee.”,

(b) the heading of the section becomes “**Application under section 31: further procedure where Accountant in Bankruptcy is not trustee**”.

(5) In section 33 (determination where amount of outlays and remuneration not agreed), in subsection (1)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) after paragraph (a), insert—

“(aa) AiB is not the trustee, and”.

(6) In section 34 (recall of sequestration by Accountant in Bankruptcy)—

(a) before subsection (1), insert—

“(A1) This section applies where AiB is not the trustee.”,

(b) after subsection (1), insert—

“(1A) Before recalling an award of sequestration AiB must take into account any representations made by an interested person within 21 days beginning with the day on which notice is given under section 31(3)(b).”.

(c) in subsection (2)(a), for “8 weeks” substitute “9 weeks”,

(d) the title to the section becomes “**Recall of sequestration where Accountant in Bankruptcy is not trustee**”.

(7) In section 35 (recall where Accountant in Bankruptcy trustee)—

(a) in subsection (1)(b)—

(i) before “considers” insert “either—

- (i) receives an application under section 31, or
- (ii)”,

(ii) for “should” substitute “may”,

(b) in subsection (2), after “must” insert “—

(a) where an application under section 31 is received, notify every creditor known to AiB that the application has been made within 7 days beginning with the day on which the application is received,

(b) where AiB is acting on its own accord,”,

(c) after subsection (2), insert—

“(2A) At the same time as giving notice under subsection (2)(b), AiB must give to the persons mentioned in subsection (2B) a notice informing the recipient that the person has a right to make representations to AiB in relation to the notification within 21 days beginning with the day on which the notice is given.

(2B) The persons are—

(a) the debtor, and

(b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration.”,

(d) in subsection (5)(a), for “subsection (2)” substitute “subsection (2A) or, as the case may be, section 31(3)(b)”,

(e) after subsection (6), insert—

“(6A) AiB may not recall an award of sequestration after—

(a) where no appeal is made under section 37(5)(a), the day which is 9 weeks after the days mentioned in subsection (5)(a) have expired, or

(b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.

(6B) If AiB does not under subsection (6) recall an award of sequestration, the sequestration must continue but is to be subject to such conditions as AiB thinks fit.

(6C) Despite notice being given under subsection (2)(b), the proceedings in the sequestration are to continue as if the notification had not been made until a recall of an award of sequestration is granted under subsection (6) (subject to any conditions imposed under subsection (6B)).”,

(f) the heading of the section becomes “**Recall of sequestration where Accountant in Bankruptcy is trustee**”.

## 2A Recall of sequestration: payment of interest

(1) Part 2 of the Bankruptcy (Scotland) Act 2016 is modified as follows.

(2) In section 30 (recall of sequestration by sheriff)—

(a) in subsection (2), in paragraph (a), after “full” insert “(including the payment of any interest payable on the debtor’s debts and the payment of the outlays and remuneration of the interim trustee and of the trustee)”, and

(b) in subsection (4), in paragraph (a), after “full of” insert “—

- (i) any interest payable on the debtor’s debts (see section 37A), and
- (ii)”.

(3) In section 32(4) (application under section 31: further procedure)—

(a) in paragraph (b), for “(including” to the end of that paragraph substitute “, including the payment in full of—

- (i) any interest payable on the debtor’s debts (see section 37A),
- (ii) the outlays and remuneration of the interim trustee and of the trustee,”, and

(b) in paragraph (c)(ii), after “payment of” insert “any interest payable on the debtor’s debts and payment of”.

(4) In section 34(1) (recall of sequestration by Accountant in Bankruptcy), in paragraph (a), for “(including the outlays and remuneration of the interim trustee and the trustee)” substitute “, including the payment in full of—

- “(i) any interest payable on the debtor’s debts (see section 37A),
- (ii) the outlays and remuneration of the interim trustee and of the trustee,”.

(5) In section 35 (recall where Accountant in Bankruptcy trustee)—

(a) in subsection (1), in paragraph (b), after “including” insert “the payment of any interest payable on the debtor’s debts and the payment of”, and

(b) in subsection (6), in paragraph (a), for “(including” to the end of that paragraph substitute “, including the payment in full of—

- “(i) any interest payable on the debtor’s debts (see section 37A),
- (ii) the outlays and remuneration of the interim trustee and of the trustee,”.

(6) After section 37, insert—

**“37A Interest**

(1) This section applies for the purpose of determining the amount of interest payable on the debtor’s debts in relation to a recall of an award of sequestration.

(2) Interest, between the date of sequestration and the date of payment of the debt, is payable at the rate specified in section 129(10), unless subsection (3) applies.

(3) This subsection applies if the whole of the debt is paid in full within 6 months after the date of the award of sequestration, in which case interest is not payable on the debt.

(4) For the avoidance of doubt, if only part of the debt is paid within 6 months after the date of the award of sequestration, interest is payable on the whole of the debt (including any part of the debt already paid since the award) in accordance with subsection (2).”

**3 When sequestration is awarded: minimal asset process**

(1) Section 22 (when sequestration is awarded) of the Bankruptcy (Scotland) Act 2016 is modified as follows.

- (2) In subsection (1)(b), for “2(8)” substitute “2(2) or (8)”.

### **3A Petition for sequestration: citation of debtor**

- (1) Section 22 (when sequestration is awarded) of the Bankruptcy (Scotland) Act 2016 is modified as follows.

- (2) For subsection (4) substitute—

“(4) The debtor must be cited no fewer than 6 days before the date specified under subsection (3).”.

### **4 Gratuitous alienations: right acquired in good faith and for value**

- (1) Section 98 (gratuitous alienations) of the Bankruptcy (Scotland) Act 2016 is modified as follows.

- (2) In subsection (7), for “(6)” substitute “(5)”.

### **5 Time periods for appeals against decisions by AiB**

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.

- (2) In section 69 (resignation or death of trustee)—

(a) in subsection (9), for “subsection (11)” substitute “subsections (11) and (12)”,

(b) for subsection (12) substitute—

“(12) T or T's representatives, NT, the debtor or any creditor may, within 14 days beginning with the date of any decision of AiB in an appeal under subsection (11)(a), appeal to the sheriff against that decision.”.

- (3) In section 134 (appeal against determination as to outlays and remuneration payable to trustee)—

(a) for subsection (3) substitute—

“(3) The trustee, the debtor or any creditor may, within 14 days beginning with the date of any decision of AiB in an appeal under subsection (1)(a), appeal to the sheriff against that decision.”,

(b) in subsection (4), after “(1)” insert “or (3)”,

(c) after subsection (5), insert—

“(6) The decision of the sheriff on an appeal under subsection (1)(b) or (3) is final.”.

### **5ZA Protected trust deeds: information and time to be provided to debtor**

- (1) Part 14 of the Bankruptcy (Scotland) Act 2016 is modified as follows.

- (2) In section 167 (statements in and advice regarding trust deed)—

(a) in subsection (3), for paragraph (b) substitute—

“(b) the trustee must provide the debtor with—

(i) a copy of a debt advice and information package, and

(ii) a copy of a trust deed information document,



(ba) the trustee must give the debtor adequate time to consider the advice and material provided under paragraphs (a) and (b),” and

(b) after subsection (3), insert—

5 “(4) For the purposes of subsection (3) a “trust deed information document” means a document containing such information (including information regarding the consequences of granting a trust deed), and in such form, as the Scottish Ministers may determine.

10 (5) The trustee must have regard to any guidance issued by the Scottish Ministers about giving debtors adequate time to consider the advice and material provided under paragraphs (a) and (b) of subsection (3).

(6) The Scottish Ministers must publish any guidance issued under subsection (5).”.

### 5A Debtor not traced: former trustee’s outlays and remuneration

15 (1) Section 142 (debtor not traced: new trustee) of the Bankruptcy (Scotland) Act 2016 is modified as follows.

(2) In subsection (6)(c), after “133” insert “(there being no effect on any outlays and remuneration paid to the former trustee before the issue of the notice)”.

### 5B Failure of debtor to co-operate with trustee in sequestration

(1) The Bankruptcy (Scotland) Act 2016 is modified by subsections (2) and (3).

20 (2) After section 147, insert—

*“Failure of debtor to co-operate with trustee*

#### 147A Debtor fails to co-operate: Accountant in Bankruptcy appointment as new trustee

25 (1) This section applies where—

(a) AiB is not the trustee in the sequestration,

(b) the period of 5 years beginning with the date of sequestration of a debtor’s estate has expired, and

(c) the debtor has not been discharged from that sequestration.

30 (2) The trustee in the sequestration may apply to AiB for authority to resign office on account of the debtor’s failure to co-operate.

(3) An application under subsection (2) must be made in the prescribed form and include information about—

(a) the nature and the extent of the debtor’s failure to co-operate with the trustee,

35 (b) the actions taken by the trustee to secure the debtor’s co-operation,

(c) any other matters that the trustee considers relevant, and

(d) details of every creditor known to the trustee.

(4) Before making an application under subsection (2), the trustee must—

(a) notify the debtor by sending an intention to resign notice, and

(b) give an intention to resign notice to every creditor known to the trustee.

(5) An intention to resign notice must—

(a) be in the prescribed form, and

(b) include a statement informing the recipient that the recipient has a right to make representations to AiB in relation to the application within 14 days beginning with the day on which the application is made.

(6) After receiving an application under subsection (2), AiB must—

(a) take into account any representations made by an interested person within 14 days beginning with the day on which the application is made, and

(b) if satisfied of the matters mentioned in subsection (7), issue to the trustee who made the application a notice in the prescribed form granting the application.

(7) The matters are—

(a) that the debtor has failed to co-operate with the trustee to such an extent that the trustee is prevented from carrying out the trustee's functions under this Act,

(b) that the failure is likely to continue, and

(c) that the trustee has taken all reasonable steps to secure the debtor's co-operation.

(8) AiB—

(a) may request such further information from the trustee as AiB considers necessary to make a decision under subsection (6), and

(b) must notify the trustee, the debtor and every creditor known to AiB of its decision under subsection (6).

(9) Where a notice is issued under subsection (6)(b), 14 days after the notice is given—

(a) AiB is deemed to be the trustee,

(b) AiB must notify the debtor and every creditor known to AiB that AiB is deemed to be the trustee,

(c) AiB must make an appropriate entry in the register of insolvencies,

(d) the former trustee is not entitled to recover, other than by a claim in the final distribution of the debtor's estate, outlays and remuneration payable under sections 132 and 133 (there being no effect on any outlays and remuneration paid to the former trustee before the issue of the notice),

(e) subsections (9) to (13) of section 69 apply in relation to the appointment of AiB as the new trustee as they apply in relation to the appointment of a new trustee under that section,

(f) section 116 applies as if there were substituted for subsection (2)—

“(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”, and

(g) section 138 applies to the sequestration with the modifications in subsection (10).

(10) The modifications are—

- (a) in subsection (2), the words “after the date which is 12 months after the date on which sequestration is awarded” are omitted,
- (b) in subsection (3), for “must, as soon as practicable after the date which is 12 months after the date on which sequestration is awarded” substitute “may, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act”,
- (c) in subsection (6), for “must, as soon as practicable after the date which is 12 months after the date of the refusal” substitute “may, at any time after a refusal, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act”.

#### **147B Accountant in Bankruptcy appointment as new trustee: review and appeal**

- (1) The trustee may apply to AiB for a review of a decision under section 147A(6) to refuse an application.
- (2) The debtor or any creditor may apply to AiB for a review of a decision under section 147A(6) to grant an application.
- (3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of notification of the decision in question.
- (4) If an application for review under subsection (2) is made, the grant of the application is suspended until the determination of that review by AiB.
- (5) If an application for a review under subsection (1) or (2) is made, AiB must—
  - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm or revoke the decision within 28 days beginning with the day on which the application is made.
- (6) If, under subsection (5)(b), AiB—
  - (a) revoke a decision to grant an application, AiB must revoke the notice given under section 147A(6)(b) granting the application,
  - (b) revoke a decision to refuse an application, AiB must issue a notice under section 147A(6)(b) granting the application, or
  - (c) confirm a decision to grant an application, section 147A(9) applies as if for the words “14 days after the notice is given” there were substituted “14 days after the AiB decision under section 147B(5)(b)”.
- (7) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of AiB under subsection (5)(b) within 14 days beginning with the day of the decision.
- (8) If an appeal relating to a decision mentioned in subsection (6)(b) or (c) is made, the grant of the application is suspended until the determination of that appeal.
- (9) If, on an appeal under subsection (7), the sheriff determines that an application which has been refused should be granted—
  - (a) the sheriff must order AiB to issue a notice under section 147A(6)(b) granting the application, and

(b) section 147A(9) applies as if the words “14 days after the notice is given” were omitted.

(10) If, on an appeal under subsection (7), the sheriff determines that an application which has been granted should be refused, the sheriff must order AiB to revoke the notice given under section 147A(6)(b) granting the application.

(11) The sheriff clerk must send AiB a copy of the sheriff's decree.

(12) The decision of the sheriff on an appeal under subsection (7) is final.

#### **147C Debtor fails to co-operate with AiB as trustee**

(1) This section applies where—

(a) AiB is the trustee but was not appointed as trustee under section 147A,

(b) the period of 5 years beginning with the date of sequestration a debtor's estate has expired, and

(c) the debtor has not been discharged from that sequestration.

(2) AiB, if satisfied of the matters mentioned in subsection (3), may make a determination that the debtor has failed to co-operate.

(3) The matters are—

(a) that the debtor has failed to co-operate with AiB as trustee to such an extent that AiB is prevented from carrying out the AiB's functions as trustee under this Act,

(b) that the failure is likely to continue, and

(c) that AiB has taken all reasonable steps to secure the debtor's co-operation.

(4) If AiB makes a determination under subsection (2)—

(a) AiB must notify the debtor and every creditor known to AiB that AiB has made a determination under subsection (2), and

(b) section 116 applies as if there were substituted for subsection (2)—

“(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”, and

(c) section 138(6) applies as if for the words “must, as soon as practicable after the date which is 12 months after the date of the refusal” there were substituted “may, at any time after a refusal, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act.”.

(3) In section 214 of the Bankruptcy (Scotland) Act 2016, after paragraph(2)(q) insert—

“(qa) section 147B(5).”.

(4) In calculating a period of 5 years for the purposes of section 147A(1)(b) or section 147C(1)(b) of the Bankruptcy (Scotland) Act 2016, any part of that period which is before the commencement of subsection (1) may be included.

**5C Commissioners: disqualification from office where AiB is trustee**

- (1) Part 4 of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 76 (commissioners), in the opening words, after “sequestration” insert “where AiB is not the trustee”.
- (3) In section 77 (election, resignation and removal of commissioners), after subsection (6), insert—
  - “(6A) A commissioner ceases to hold office if AiB is, or becomes, the trustee.”.

*Arrestee’s duty of disclosure***6 Arrestment and action of furthcoming**

- (1) Part 3A of the Debtors (Scotland) Act 1987 is modified as follows.
- (1A) After section 73C, insert—

**“73CA Service of documents for purposes of sections 73B and 73C**

- (1) In relation to the service of documents for the purposes of sections 73B and 73C, the documents must be served on the arrestee either—

- (b) by being sent to the proper address of the arrestee—

- (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

- (ii) by a postal service which provides for the delivery of the document to be recorded, or

- (c) by being transmitted to the arrestee electronically.

- (1A) But, despite subsection (1), if it is impossible or impracticable for the documents to be served on the arrestee in either of the ways described in that subsection, service of the documents may instead be effected by any other competent mode of service.

- (2) For the purpose of subsection (1)(b), the proper address of the arrestee is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body,

- (b) in the case of a partnership, the address of the principal office of the partnership,

- (c) in any other case, the last known address of the arrestee.

- (3) Where a document is served as mentioned in subsection (1)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

- (4) For the purpose of subsection (1)(c)—

- (a) electronic transmission of a document must be effected in a way that the arrestee has indicated to the creditor or officer of court that the arrestee is willing to receive the document,

- (b) the arrestee’s indication of willingness to receive a document in a particular way may be—

- (i) specific to the document in question or generally applicable to documents of that kind,

(ii) expressed specifically to the creditor or officer of court or generally (for example on a website),

(iii) inferred from the arrestee having previously been willing to receive documents from the creditor or officer of court in that way and not having indicated unwillingness to do so again,

(c) the creditor or officer of court's uploading of a document to an electronic storage system from which the arrestee is able to download the document may constitute electronic transmission of the document, where the arrestee is sent a notification that the document has been uploaded in that way,

(d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.”.

(2) In section 73G(4) (arrestee's duty of disclosure)—

(a) in paragraph (a), the word “and” after sub-paragraph (ii) is repealed,

(b) after paragraph (b), insert—

“(c) where no property is attached, the reason why (for example, the arrestee does not hold funds standing to the credit of the debtor, or does hold such funds but the sum held is less than sum mentioned in section 73F(3)(a)).”.

(3) In section 73H (failure to disclose information)—

(a) in subsection (1)(b), for “mentioned in section 73F(4) of this Act” substitute “of £500”,

(b) after subsection (4), insert—

“(5) The Scottish Ministers may by regulations modify subsection (1)(b) so as to vary the sum mentioned there.”.

## **6A Attachment of property or funds: duty to consult and power to make further provision**

(1) The Scottish Ministers must, within 1 year of this section coming into force—

(a) consult such persons as they consider appropriate about the merits of—

(i) attaching particular types of funds or other property in pursuance of any provision under Part 3A of the Debtors (Scotland) Act 1987 (“the 1987 Act”),

(ii) establishing, or modifying, a process for a debtor to apply to a decision-maker for an order requiring an arrestee to release to a debtor funds due to, or other property of, the debtor attached by an arrestment in accordance with that Part,

(b) after having had regard to the views expressed, prepare a report which—

(i) summarises the consultation responses received, and

(ii) sets out what steps (if any) the Scottish Ministers propose to take as a result of the findings (including, for example, the exercise of their regulation making powers under section 73U of the 1987 Act to modify Part 3A of that Act).

(2) The Scottish Ministers must, as soon as reasonably practicable after preparing the report, lay the report before the Scottish Parliament.

- (3) The Scottish Ministers must comply with the duties in subsections (1) and (2) before laying a draft of a Scottish statutory instrument containing the first regulations under section 73U of the 1987 Act before the Scottish Parliament.
- (4) The Debtors (Scotland) Act 1987 is modified by subsection (5).
- 5 (5) After section 73T, insert—

**“73U Power to make provision about attaching particular property or funds**

- (1) The Scottish Ministers may by regulations modify this Part to make provision—

- (a) about the types of funds or other property that may not be attached by an arrestment,
- 10 (b) establishing, or modifying, a process for a debtor to apply to a person specified in the regulations (a “decision-maker”) for an order requiring an arrestee to release to a debtor funds due to, or other property of, the debtor attached by an arrestment.

- (2) Regulations under subsection (1) may (among other things)—

- 15 (a) in respect of regulations under paragraph (a) of that subsection, include provision specifying—

- (i) cases or circumstances in which particular funds or property may not be attached by an arrestment,
- 20 (ii) particular types of funds which must be disregarded when calculating the protected minimum sum mentioned in section 73F(3)(a),

- (b) in respect of regulations under paragraph (b) of that subsection, include provision about—

- 25 (i) the manner in which debtors may apply to a decision-maker for an order,
- (ii) the information to be provided as part of an application,
- (iii) the factors which a decision-maker must have regard to in deciding whether to give an order (for example, that the attachment of particular funds or property is unduly harsh),
- 30 (iv) the process for determining if an order should be given (for example, by conferring a discretion on a decision-maker or other person to decide any matter),
- (v) how an application for an order may be challenged,
- (vi) the effect of an order given by the decision-maker (including the obligations, or restrictions, on a debtor, creditor or arrestee to whom the arrestment concerned), and
- 35 (vii) appeals against an order (including providing for the fees payable in relation to such an appeal).

- (3) Regulations under subsection (1) may—

- 40 (a) make different provision for different purposes,
- (b) include incidental, supplementary, consequential, transitional, transitory or saving provision.

- (4) Regulations under subsection (1) are subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).”.

## 7 Diligence against earnings

(1) Part 3 of the Debtors (Scotland) Act 1987 is modified as follows.

(1A) In section 70 (execution and intimation of copies)—

(a) for subsection (3), substitute—

“(3) An earnings arrestment schedule or a current maintenance arrestment schedule must be served on an employer either—

(b) by being sent to the proper address of the employer—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) by being transmitted to the employer electronically.

(3ZA) But, despite subsection (3), if it is impossible or impracticable for the documents to be served on the employer in either of the ways described in that subsection, service of the documents may instead be effected by any other competent mode of service.

(3A) For the purpose of subsection (3)(b), the proper address of the employer is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the employer.

(3B) Where a document is served as mentioned in subsection (3)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(3C) For the purpose of subsection (3)(c)—

(a) electronic transmission of a document must be effected in a way that the employer has indicated to the officer of court that the employer is willing to receive the document,

(b) the employer’s indication of willingness to receive a document in a particular way may be—

(i) specific to the document in question or generally applicable to documents of that kind,

(ii) expressed specifically to the officer of court or generally (for example on a website),

(iii) inferred from the employer having previously been willing to receive documents from the officer of court in that way and not having indicated unwillingness to do so again,



(c) the officer of court's uploading of a document to an electronic storage system from which the employer is able to download the document may constitute electronic transmission of the document, where the employer is sent a notification that the document has been uploaded in that way,

(d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.”, and

(b) for subsection (5), substitute—

“(5) Section 12(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 applies to the service of an earnings arrestment schedule, a current maintenance arrestment schedule or a conjoined arrestment order as it applies to the execution of an attachment except where such service is by post or transmitted electronically.”.

(2) In section 70A (employer's duty to provide information)—

(a) in subsection (1)—

(i) for “Where an employer” substitute “This section applies where a person”,

(ii) the words from “the employer shall” to the end of the subsection are repealed,

(b) for subsection (2) substitute—

“(1A) If—

(a) the debtor is not employed by the person who received the schedule or order, or

(b) the debtor is employed by that person but, because of the net earnings of the debtor, the sum to be deducted on any pay-day under this Part of this Act is, or is expected to be, nil,

the person must, within 21 days of the order or schedule being served, send to the relevant person the information mentioned in paragraph (a) or (b) (as appropriate) in (or as nearly as may be in) such form as may be prescribed.

(2) Otherwise, the employer must send to the relevant person the information mentioned in subsection (3) at each of the following times—

(a) as soon as is reasonably practicable following the order or schedule being served, and

(b) subsequently, provided the debt has not been extinguished, on or as soon as is reasonably practicable after the dates mentioned in subsection (4),

in (or as nearly as may be in) such form as may be prescribed.”,

(c) in subsection (3)—

(i) in the opening words, for “(1)” substitute “(2)”,

(ii) in paragraph (b)(i), for “(1)” substitute “(2)(a)”,

(iii) in paragraph (b)(ii), for “(2)” substitute “(2)(b)”,

(d) in subsection (4), for “(2)” substitute “(2)(b)”,

(e) in subsection (5)—

(i) in the opening words, for “subsections (1) and (2)” substitute “subsection (2)”,

(ii) in the opening words, for the words from “give notice” to “the sheriff clerk” substitute “send to the relevant person notice—”,

(iii) after paragraph (b), insert—

“in (or as nearly as may be in) such form as may be prescribed.”,

(f) after subsection (5), insert—

“(5A) But subsection (5) does not apply where a notice has been given to the relevant person under subsection (1A)(b).”,

(g) in subsection (6), for “subsection (1) or (2)” substitute “subsection (2)”,

(h) after subsection (6), insert—

“(7) In this section—

(a) “relevant person” means—

(i) the creditor, or

(ii) in the case of a conjoined arrestment order, the sheriff clerk,

(b) “prescribed” means prescribed by regulations made by the Scottish Ministers.”.

(i) the heading of the section becomes “**Employers etc.: duty to provide information**”.

(3) In section 70B (failure to give notice under section 70A(5))—

(a) before subsection (1), insert—

“(A1) Where a person fails without reasonable excuse to send the information required under section 70A(1A) or (2) of this Act, the sheriff may, on the application of any creditor, make an order requiring the person who received the schedule or order—

(a) to send the information to the creditor, and

(b) to pay to the creditor—

(i) the sum due to the creditor by the debtor, or

(ii) the sum of £500,

whichever is the lesser.”,

(b) in subsection (1)(b), for the words from “an amount” to the end of that paragraph substitute “—

(i) the sum due to the creditor by the debtor, or

(ii) the sum of £500,

whichever is the lesser.”,

(c) in subsection (2), in the opening words, for “subsection (1)(b)” substitute “subsection (A1)(b) or (1)(b)”,

(d) in subsection (3)—

(i) for “An employer” substitute “A person”,

(ii) for “subsection (1)” substitute “subsection (A1)(b) or (1)(b)”,

(e) after subsection (3), insert—

“(4) The Scottish Ministers may by regulations modify subsection (A1)(b)(ii) or (1)(b)(ii) so as to vary the sums mentioned there.”,

(f) the heading of the section becomes “**Failure to give notice under section 70A**”.

### *Diligence on the dependence*

## 5 8 **Provision of debt advice and information package**

(1) Part 1A of the Debtors (Scotland) Act 1987 is modified as follows.

(2) In section 15F (hearing on application)—

(a) in subsection (3)—

(i) the word “and” immediately following paragraph (b) is repealed,

(ii) after paragraph (c), insert “; and

(d) where the debtor is an individual, that the creditor has provided the debtor with a debt advice and information package.”,

(b) after subsection (7), insert—

“(8) In this section and in section 15K, “debt advice and information package” means the debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.”.

(3) In section 15K (recall or restriction of diligence on dependence)—

(a) after subsection (5), insert—

“(5A) Where subsection (5B) applies and the court is satisfied that the creditor has not provided the debtor with a debt advice and information package it—

(a) must make an order—

(i) recalling the warrant, and

(ii) if an arrestment or inhibition has been executed in pursuance of the warrant, recalling that arrestment or inhibition, and

(b) may make an order ancillary to any order mentioned in paragraph (a).

(5B) This subsection applies where—

(a) the debtor is an individual, and

(b) the hearing is a hearing fixed under section 15E(4)(a).”.

(b) in subsection (10), after “(5),” insert “(5A),”.

### *Exceptional attachment*

## 9 **Notice and redemption periods**

(1) Part 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 is modified as follows.

(2) In section 53 (removal of articles attached in dwellinghouse), in subsection (2), at the end insert “(which is to be not less than 7 days from the date on which the notice is given)”.

(3) In section 56 (redemption), in subsection (1), for the words from “, within 7 days” to the end of that subsection substitute “—

- (a) where an article was removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 7 days of the date on which it was attached,
- (b) where an article was not removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 14 days of the date on which it was attached.”.

*Money attachment*

**10 Money attachment when premises are open**

(1) Section 176 (when money attachment not competent) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 is modified as follows.

(2) After subsection (2), insert—

“(2A) But—

- (a) despite subsection (1), it is competent to execute a money attachment in any premises in which a trade or business is carried on on any day the premises are open (whether to the public generally or not) for the purposes of the trade or business, and
- (b) despite subsection (2), the execution of a money attachment may be commenced or continued in such premises at any time the premises are open (whether to the public generally or not) for the purposes of the trade or business, without the officer of court obtaining prior authority of the sheriff.”.

*Arrestment of ships*

**10A Arrestment of ships on a Sunday**

Any rule of law that prevents the execution of an arrestment on a Sunday ceases to have effect insofar as it relates to the arrestment of ships.

*Final provisions*

**11 Ancillary provision**

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—

- (a) make different provision for different purposes,
- (b) modify any enactment (including this Act).

(3) The regulations—

- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
- (b) are subject to the negative procedure if they do not.

**12 Commencement**

- (1) This section and sections 11 and 13 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- 5 (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

**13 Short title**

The short title of this Act is the Bankruptcy and Diligence (Scotland) Act 2024.

# **Bankruptcy and Diligence (Scotland) Bill**

[AS PASSED]

An Act of the Scottish Parliament to make provision to establish a mental health moratorium; to modify the Bankruptcy (Scotland) Act 2016; and to modify the law of diligence.

Introduced by: Shona Robison  
Supported by: Tom Arthur  
On: 27 April 2023  
Bill type: Government Bill

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