

Bankruptcy and Diligence (Scotland) Bill — Stage 3

Section 1

Ivan McKee

1 In section 1, page 1, line 23, at end insert—

<() the obligations, or restrictions, on an individual or creditors following the end of the moratorium period.>

After section 1

Ivan McKee

2 After section 1, insert—

<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.>

Ivan McKee

3 After section 1, insert—

<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.>

Section 2A

Ivan McKee

- 4 In section 2A, page 5, line 6, after first <of> insert <the>

After section 5

Ivan McKee

- 5 After section 5, insert—

<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—
- “(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.
- (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).”>

Section 6

Colin Smyth

- 6 In section 6, page 10, line 7, leave out <may> and insert <must>

Colin Smyth

- 7 In section 6, page 10, line 7, after <arrestee> insert <either>

Colin Smyth

- 8 In section 6, page 10, leave out line 8

Colin Smyth

9 In section 6, page 10, line 14, at end insert—

- <(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.>

After section 6

Colin Smyth

10 After section 6 insert—

<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) 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,
 - (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)—
- (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,
 - (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—
 - (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),
 - (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
 - (vii) appeals against an order (including providing for the fees payable in relation to such an appeal).
- (3) Regulations under subsection (1) may—
- (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).”>

Section 7

Colin Smyth

- 11 In section 7, page 11, line 19, leave out <may> and insert <must>

Colin Smyth

- 12 In section 7, page 11, line 19, after <employer> insert <either>

Colin Smyth

- 13 In section 7, page 11, leave out line 20

Colin Smyth

14 In section 7, page 11, line 26, at end insert—

<(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.>