

## Bankruptcy and Diligence (Scotland) Bill — Stage 3

### Section 1

#### Daniel Johnson

- 23 In section 1, page 1, line 26, leave out <any enactment> and insert <—  
( ) the Bankruptcy (Scotland) Act 2016,  
( ) the law of diligence,>

#### After section 7

#### Maggie Chapman

- 24 After section 7, insert—

*<Arrestment of social security benefits in bank accounts*

#### **Arrestment of social security benefits in bank accounts**

- (1) Part 3A of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In section 73M (notice of objection), after subsection (7), insert—
  - “(8) For the purposes of (4)(b), an arrestment has been executed incompetently where it attaches funds wholly derived from social security benefits.
  - (9) For the purposes of subsection (8), the court in deciding whether an arrestment is incompetent, can disregard any funds which—
    - (a) are alimentary and have been received by the debtor from someone who is an associate for the purposes of section 229(4) of the Bankruptcy (Scotland) Act 2016,
    - (b) are an interest or dividend payment and have a value of less than £20, or
    - (c) have been borrowed by the debtor and have a value of less than £200.
  - (10) Where subsection (8) applies and funds have been attached by an 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.”>

#### After section 8

#### Maggie Chapman

- 25 After section 8, insert—

*<Charges for payment*

#### **Charges for payment**

- (1) Part 6 of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In section 90 (provisions relating to charges for payment), after subsection (8), insert—

- “(9) A charge for payment must be served on the debtor—
- (a) by being sent to the proper address of the debtor—
    - (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
  - (b) by being transmitted to the debtor electronically, or
  - (c) where service under paragraphs (a) or (b) is not possible, by any other competent mode of service.
- (10) For the purpose of subsection (9)(a), the proper address of the debtor 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 debtor.
- (11) Where a document is served as mentioned in subsection (9)(a) 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.
- (12) For the purpose of subsection (9)(b)—
- (a) electronic transmission of a document must be effected in a way that the debtor has indicated to the officer of court that the debtor is willing to receive the document,
  - (b) the debtor’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 in previous correspondence),
    - (iii) inferred from the debtor 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 debtor is able to download the document may constitute electronic transmission of the document, where the debtor 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.
- (13) Section 12(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 applies to the service of a charge for payment as it applies to the execution of an attachment except where such service is by post or transmitted electronically.”>