

Bankruptcy and Diligence (Scotland) Bill

Groupings of Amendments selected for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Group 1: Mental Health Moratorium

15, 1, 23, 2, 3

Group 2: Local authority debt recovery: pre-action requirements

16

Group 3: Minor

4

Group 4: Protected trust deeds: information and time to be provided to debtor

5

Group 5: Service of documents

6, 7, 8, 9, 11, 12, 13, 14, 25

Group 6: Attachment of property or funds

17, 10, 19, 22, 24

Group 7: Arrestment: duty of disclosure

18, 20, 21

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Amendments in debating order

Group 1: Mental Health Moratorium

Paul O'Kane

Supported by: Daniel Johnson

- 15** In section 1, page 1, line 5, leave out <may> and insert <must>

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.>

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,>

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—

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<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.>

Group 2: Local authority debt recovery: pre-action requirements and recovery of rates

Paul O’Kane

16 After section 1, insert—

<Debt arrears: creditor pre-action requirements

Debt arrears: creditor pre-action requirements

- (1) The Scottish Ministers may 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 a debtor 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.>

Group 3: Minor

Ivan McKee

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

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Group 4: Protected trust deeds: information and time to be provided to debtor

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).”.>

Group 5: Service of documents

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.>

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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.>

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.

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- (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.”.>

Group 6: Attachment of property or funds

Paul O’Kane

17 In section 6, page 10, line 42, 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.”.>

Colin Smyth

10 After section 6, insert—

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<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,

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- (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).”.>

Colin Smyth

19 In section 7, page 11, line 15, at end insert—

<() After section 49A, insert—

“49B Deductions allowing for household circumstances

- (1) The debtor may make a request to the creditor for a sum lower than that specified in Schedule 2 to be deducted, where—
 - (a) a deduction from earnings above the minimum protected balance will continue to be made, and
 - (b) the request includes a statement from the debtor setting out why he considers that his household circumstances warrant a lower deduction to be made.
- (2) Where a request has been made under subsection (1), the creditor must, within 21 days—
 - (a) consider the response, and
 - (b) issue a written decision to the debtor confirming that—
 - (i) the creditor agrees with the request and the sum to be paid, or
 - (ii) the creditor does not agree with the request.
- (3) Where the creditor agrees to the debtor’s request, the creditor must notify the employer.
- (4) The debtor may make a request under subsection (1) once in each period of 6 months.

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- (5) For the purposes of this section, “household circumstances” may include—
- (a) any ongoing financial liabilities of the household,
 - (b) the number of dependent adults and children in the household,
 - (c) other household income,
 - (d) health issues of a member of the household.
- (6) The Scottish Ministers may by regulations modify subsection (5) by adding, removing or varying the meaning of household circumstances.”.>

Colin Smyth

22 After section 7, insert—

<Earning arrestment

Earning arrestment

- (1) Schedule 2 of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) For Table A (deductions from weekly earnings) substitute—

“Net Earnings	Deduction
Not exceeding £230.10	Nil
Exceeding £230.10 but not exceeding £368.34	£4 or 31% of earnings exceeding £230.10, whichever is the greater
Exceeding £368.34 but not exceeding £506.42	£42.85 plus 18% of earnings exceeding £368.34
Exceeding £506.52 but not exceeding £667.73	£67.72 plus 22% of earnings exceeding £506.62
Exceeding £667.73	£103.19 plus 45% of earnings exceeding £667.73”.

- (3) For Table B (deductions from monthly earnings) substitute—

“Net Earnings	Deduction
Not exceeding £1,000	Nil
Exceeding £1,000 but not exceeding £1,600	£15 or 31% of earnings exceeding £1,000, whichever is the greater
Exceeding £1,600 but not exceeding £2,200	£186 plus 18% of earnings exceeding £1,600
Exceeding £2,200 but not exceeding £2,900	£294 plus 22% of earnings exceeding £2,200
Exceeding £2,900	£448 plus 45% of earnings exceeding £2,900”.

- (4) For Table C (deductions from daily earnings) substitute—

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“Net Earnings	Deduction
Not exceeding £32.87	Nil
Exceeding £32.87 but not exceeding £52.60	£0.50 or 31% of earnings exceeding £32.87, whichever is the greater
Exceeding £52.60 but not exceeding £72.36	£6.12 plus 18% of earnings exceeding £52.62
Exceeding £72.36 but not exceeding £95.39	£9.67 plus 22% of earnings exceeding £72.36
Exceeding £95.39	£14.74 plus 45% of earnings exceeding £95.39”.>

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.”.>

Group 7: Arrestment: duty of disclosure

Murdo Fraser

18 In section 6, page 11, line 1, leave out subsection (2), and insert—

<() In section 73G (arrestee’s duty of disclosure), after subsection (5), insert—

- “(6) Subsection (7) applies where—
 - (a) no property is attached, and

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- (b) the arrestee receives a request for information from a creditor in relation to a warrant not granted under summary warrant procedure.
- (7) The arrestee must, as soon as reasonably practicable after the request is received, send to the creditor in (or as nearly as may be in) the form prescribed by the Scottish Ministers by regulations, information about the reason why no property is attached (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 the sum mentioned in section 73F(3)(a)).”.>

Murdo Fraser

- 20** In section 7, page 12, line 33, after <nil,> insert <and,
() the person receives a request from a relevant person for information,>

Murdo Fraser

- 21** In section 7, page 12, line 34, leave out <within 21 days of the order or schedule being served> and insert <as soon as is reasonably practicable following receipt of the request>

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