OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 1 November 2016

Session 5

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DELEGATED POWERS AND LAW REFORM COMMITTEE

9th Meeting 2016, Session 5

CONVENER

*John Scott (Ayr) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Rachael Hamilton (South Scotland) (Con)
*Monica Lennon (Central Scotland) (Lab)
David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alex Reid (Accountant in Bankruptcy)
Paul Wheelhouse (Minister for Business, Innovation and Energy)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 1 November 2016

[The Convener opened the meeting at 10:00]

Bankruptcy (Scotland) Act 2016: Subordinate Legislation

Bankruptcy (Scotland) Regulations 2016 [Draft]

Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [Draft]

Protected Trust Deeds (Scotland) Amendment Regulations 2016 [Draft]

Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016 (SSI 2016/295)

Bankruptcy (Scotland) Act 2016 (Commencement) Regulations 2016 (SSI 2016/294 (C 27))

The Convener (John Scott): Good morning, everyone. I welcome members to the ninth meeting in 2016, in session 5, of the Delegated Powers and Law Reform Committee.

This morning, the committee will consider a package of instruments that have been laid before Parliament in connection with the Bankruptcy (Scotland) Act 2016. We will wait for a minute until the Minister for Business, Innovation and Energy appears—I thought that he might have been here by now. [*Interruption*.] There he is—that is excellent.

The Bankruptcy (Scotland) Act 2016 was considered by the Delegated Powers and Law Reform Committee as the lead committee in session 4, and the committee has been designated in this session as the lead committee for consideration of the instruments, so this morning it will undertake both its usual technical scrutiny and policy scrutiny.

Item 1 is an opportunity for the committee to take evidence on the instruments from the Minister for Business, Innovation and Energy and his officials, and to ask from policy and technical perspectives questions on all the bankruptcy instruments that the Scottish Government has laid.

It is my pleasant duty to welcome Paul Wheelhouse, who is the Minister for Business, Innovation and Energy. I also welcome Graham Fisher, who is head of branch 1 of the constitutional and civil law division of the Scottish Government legal directorate; Alex Reid, who is the head of policy development at the Accountant in Bankruptcy; and Carol Kirk, who is policy review team leader at the Accountant in Bankruptcy.

I note that the minister has an opening statement. If you would like to give it, minister, we would be very pleased to hear from you.

The Minister for Business, Innovation and Energy (Paul Wheelhouse): Thank you very much, convener. Good morning, everyone.

The regulations that are before members represent what we intend will be one of the final instalments in the exercise to consolidate Scotland's bankruptcy legislation. Following the successful passage through Parliament earlier this year of the Bankruptcy (Scotland) Act 2016—in which, as members know, this committee's predecessor played a crucial role—the next step in the process is to consolidate the regulations that accompany the primary legislation. Consolidation of the regulations will complement the 2016 act to make Scotland's bankruptcy legislation more accessible for practitioners who use it and people who are affected by it.

I should first say something about our approach to consolidating the regulations. We propose that the 2016 act will apply to sequestrations that have been applied for on or after 30 November this year and to trust deed arrangements that are executed from that date. Currently, 11 sets of regulations fill out the detail of primary bankruptcy legislation: we propose to reduce that to four sets for sequestrations and trust deeds that fall under the new act, plus a short set of commencement regulations that will bring the new act in on 30 November 2016.

Over the summer, we consulted stakeholders on draft regulations. They provided valuable feedback on the proposals for consolidation of the regulations. The Institute of Chartered Accountants of Scotland said:

> "While in some instances we may not agree with the conclusions reached, we would wish to formally record our gratitude to this approach being taken. We consider that such an approach represents best practice and can assist the Parliament to scrutinise legislation brought forward and ensure that legislation introduced is 'fit for purpose'."

The first affirmative instrument that is before the committee—the draft Bankruptcy (Scotland) Regulations 2016—will consolidate the main secondary legislation under the Bankruptcy (Scotland) Act 1985, principally in respect of the 140 pages or so of forms that are part of the

bankruptcy processes. I highlight regulation 14, which will make a minor change to the value of assets at which the simplified minimal asset process ceases to apply, in order to address a discrepancy in how newly identified assets—principally payment protection insurance repayments—are treated.

The second affirmative instrument—the draft Protected Trust Deeds (Forms) (Scotland) Regulations 2016—provides forms that are to be used with protected trust deeds under the 2016 act. The instrument also takes the opportunity to bring minor points in the 2016 act forms into line with current practice.

The third affirmative instrument—the draft Protected Trust Deeds (Scotland) Amendment Regulations 2016—mirrors, for ease of administration, minor amendments to the forms under the 2016 act for trust deeds under the 1985 act. Although those are technically beyond the scope of the consolidation of the existing regulations, it is helpful to consider them as part of the package because they do the same thing.

As part of our consolidation, it is important to stress that although the regulations do not—with one exception—introduce new policy, we have, where we think it important to clarify legislation or issues, sought to do that in the regulations.

The negative instrument—the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016 (SSI 2016/295)—will consolidate the rules for proceedings before the Accountant in Bankruptcy for cases under the 2016 act.

The Bankruptcy Fees etc (Scotland) Regulations 2014 will be reviewed in the first half of 2017. They have not been consolidated at this time, but will continue to apply under the transitional continuity provisions in the 2016 act. The Accountant in Bankruptcy will publish details of the corresponding provisions under the 2016 act on its website. The package of regulations will ensure that references to the new act are changed. Detailed tables of correspondence have been prepared to assist users of the legislation in making the transition.

We have worked closely with stakeholders, who have provided valuable feedback on the proposals for consolidation of the regulations—in particular ICAS, the Scottish technical committee of R3 Association of Business Recovery Professionals, and StepChange Debt Charity Scotland. ICAS provided feedback on issues that we recognise as important and will seek to address, but which we consider fall outwith the scope of this exercise. The Scottish Government and the Accountant in Bankruptcy will continue to work with ICAS and other stakeholders to consider those areas separately.

I acknowledge that relatively minor drafting issues arise with two of the sets of regulations. For the reasons that we have set out to the committee, we do not believe that they will raise practical difficulties, but it is important to put them right. I confirm that I will ensure that the errors, together with the minor points that R3 raised in its response to the committee's call for evidence, are rectified as soon as is practicable.

I am keen to address the requests from stakeholders to ensure that arithmetic issues are more transparent in forms, although I accept that there are reasons why the forms are laid out as they are. I thank the committee for taking the time to consider the instruments.

ICAS, in its submission to the committee, states:

> "Overall, and taking into account the comments we have received back from the AiB in response to the informal consultation carried out, we would support the Regulations coming into effect."

I believe that R3 has made similar remarks. We are happy to take questions.

The Convener: Thank you for your opening statement, minister. We will start with technical questions and thereafter move on to policy questions.

With regard to the draft Protected Trust Deeds (Forms) (Scotland) Regulations 2016, the committee will consider at item 2 whether to draw the regulations to the attention of Parliament on the general reporting ground because the regulations contain two minor drafting errors. It is noted—I thank the minister for saying it—that the Scottish Government intends to correct the errors at the next legislative opportunity.

With regard to the draft Bankruptcy (Scotland) Regulations 2016, the committee will consider at item 2 whether to draw the regulations to the attention of Parliament under the general reporting ground because they contain drafting errors, and whether to report the regulations under ground (h) because the meaning of regulation 22 could be clearer. The committee would like to explore that second point with the minister. Regulation 22 of the draft Bankruptcy (Scotland) Regulations 2016 makes provision in respect of conversion into sterling of a creditor's claim that has been stated in a foreign currency. The regulation provides that the manner of conversion is to be at

> "a single exchange rate of for that currency"

as determined by the trustee with reference to prevailing exchange rates on the date of sequestration.

The Scottish Government has confirmed that regulation 22 should refer to “a single exchange rate for that currency” and proposes to remove the word “of” as a printing point in the minister’s signing copy. The committee considers that errors in the instrument should be corrected by way of printing point only when the error in question is highly self-evident in nature and capable of no alternative interpretation. The error in regulation 22 does not appear to the committee to be self-evident in nature, since a doubt may arise as to the intended meaning of the provision. The erroneous inclusion of the word “of” might be taken to indicate a figure that is missing from the provision. For example, the provision might be intended to read “a single exchange rate of X for that currency”. It is therefore considered that the meaning of regulation 22 could be clearer.

For that reason, the committee does not consider it appropriate that the error that has been identified in regulation 22 be changed as a printing point at signing and asks whether the minister will instead consider, please, making in due course the required change to regulation 22 of the draft Bankruptcy (Scotland) Regulations 2016 by an amending instrument.

Paul Wheelhouse: I will address the point that the convener has very fairly raised and, for the record, I apologise for the committee’s having had to raise the issue, which should, clearly, have been picked up and recognised previously. Thank you for raising it.

I confirm that there is a typographical error in regulation 22, which should refer to “a single exchange rate for that currency”, as in regulation 11 of the Bankruptcy (Scotland) Regulations 2014 (SSI 2014/225), which are consolidated and updated. We have proposed that the error be corrected as a printing point by removing the word “of”. However, I take the point that the convener has made: we are happy to address the issue through an amending instrument, if that is the committee’s request.

The Convener: Thank you very much.

I will move to other questions, if that is all right, of which we have a series.

Stuart McMillan (Greenock and Inverclyde) (SNP): Good morning, minister. By changing the asset threshold at which a debtor must move from the minimal asset process route into bankruptcy to the standard route, what do you think the effect might be on the number of people transferred from the minimal asset process into full bankruptcy?

Paul Wheelhouse: If I may, convener, I will bring in Alex Reid on this point of detail.

Alex Reid (Accountant in Bankruptcy): I think that the number will be low. There has been a low number of instances of people in a minimal asset process bankruptcy being made aware of PPI compensation payments. When somebody is in a full administration bankruptcy, that vests in the estate and with the trustee, but because of the threshold limits it has not been possible to administer such payments within the bankruptcy. The change is designed to address that anomaly and to introduce greater fairness to the process. We expect the number to be low, but the matter is, nevertheless, something that we felt we needed to address.

Stuart McMillan: When you say that you think the number will be low, do you have any indication of what the final number will be, or do you have any forecasting data?

Alex Reid: We do not. I know that there has been a low number of cases—two—in which PPI compensation payments have been received within the period of a minimal asset process, but I do not have any way to predict what will happen.

Stuart McMillan: Have external organisations provided information that indicates how many potential cases they envisage?

Alex Reid: I do not have that information to hand. As I say, the anomaly has arisen, but I have no projections on the number of people who are in a minimal asset process bankruptcy who are likely to receive PPI compensation or have an additional asset coming in.

Stuart McMillan: In your view, does the approach help to support financial resilience among people on the lowest incomes? Is there a risk that the change, which will remove assets from that group, will be counterproductive?

10:15

Paul Wheelhouse: In response to Stuart McMillan’s first question, I appreciate that we are not furnished with the information that we would like and which would enable us to say exactly how many people might be affected by the change in the threshold. I gather from evidence that has been shared with me that the change is designed to deal with a potential anomaly rather than with a huge wave of people who have been affected. It is difficult to say to what extent the current provisions are causing disadvantage or creating difficulty in that respect.

Through the consolidation exercise we have with ICAS, R3, StepChange and other stakeholders committed to a future review in which we can pick up on issues that were raised in the consultation but which we felt were outwith the scope of this exercise. When we put the legislation into practice, if it appears to be causing any difficulty we can address that further down the line.

I give Stuart McMillan the commitment that we will keep an eye out for the regulations causing any difficulty for people whom they affect.

Stuart McMillan: That would be helpful. Thank you.

The Convener: I have a question about scale. I appreciate that you do not want to put numbers to this, but would a low number be between one and 10 or between 50 and 100?

Paul Wheelhouse: I am not trying to be difficult, convener, but I am not close to the detail of what was said during the engagement with stakeholders in the consultation. I refer your question to Alex Reid, who may be aware of anecdotal evidence from consultees in the exercise.

Alex Reid: So far, I am aware of two incidences of minimal asset process bankruptcy in which it has not been possible to administer funds that would have been administered in a full administration bankruptcy. I take the point about the process disadvantaging people who are in that group, but there is an element of unfairness if, in a bankruptcy process, funds can be administered by one route but not by another. I am aware of two cases, but it is difficult to give a figure for the number of cases in which there will be PPI compensation or in which assets will arise in the future.

The Convener: Okay. I suppose that we should welcome your natural caution. Let us move on.

Monica Lennon (Central Scotland) (Lab): Good morning, minister. You mentioned in your opening statement that you value the feedback that you received from stakeholders during the consultation that took place over the summer. In their written evidence to the committee, both ICAS and R3 argue that setting the statutory interest rate for bankruptcy debts at 8 per cent is punitive in the current financial climate and that the rate should be reduced. What is your response to that concern?

Paul Wheelhouse: I agree that, in the context of current low interest rates, a rate of 8 per cent seems punitive. We are aware of the concern and I have shared it with the AIB. A consultation is under way in England and Wales: we could learn a lot from the feedback that is received on the interest rate. It has been suggested that a 1.5 per cent premium on the base lending rate would be a more acceptable and fairer rate, and I am sympathetic to such arguments. However, we want to learn from the exercise that is being undertaken in England and Wales rather than have two separate consultations on the same subject running concurrently. If need be, we can adjust our approach on the basis of the evidence that comes out of that consultation.

I appreciate that stakeholders have said that there is no need for the AIB to take exactly the same approach as is taken in England and Wales, but we can learn from that consultation and decide either to take a similar approach or—if we feel that the approach that England and Wales take is still too punitive—do something more appropriate. I am very much aware of the issue and agree that 8 per cent is an unacceptably high rate at this time. We will wait for the outcome of the consultation in England and Wales and will learn from that.

Monica Lennon: The committee understands that the Scottish Government would prefer to wait for the results of the review of interest rates in England and Wales before it considers changes here, but why not look at the matter now? Do you know how long the review in England and Wales could take? Is consideration being given to setting a separate Scottish interest rate?

Paul Wheelhouse: As I said, we have not set out on a path where we are deliberately going out of our way to have a different approach from the approach in England and Wales. I accept the principle that 8 per cent seems to be unusually high, given that we have very low base rates at this time. The interest rate does not seem to have moved down in line with the decrease in base rates, and people are perhaps paying a higher rate than might be justified in the circumstances.

We can learn from the exercise that is being done in England and Wales. Once we have the outcome of that, if England and Wales decide to reduce the rate we could in theory set a similar level, or if we feel that the rate that they conclude is appropriate is still too high we could do our own thing and have a different rate. I give the member a commitment that we will look at the issue and, if need be, take a different path from that which is taken in England and Wales. However, we can learn from the consultation, which involves the same stakeholders that we would consult—the professional bodies and those who advise individuals on debt issues—and their submissions to the England and Wales exercise, and take the issue forward.

Monica Lennon: Is there a timescale for that? If it is taking too long in England and Wales, is there a point at which you will think that Scotland cannot wait to learn from its neighbours?

Paul Wheelhouse: On the general principle, if the matter was taking too long we could act. I ask my colleagues to comment on the precise timing of the consultation, to make sure that the committee is informed when that is likely to conclude. Will you address that point, Alex?

Alex Reid: We are advised that it is due. We have asked for timings, but I do not have a specific timing yet.

The Convener: You would expect that to be relatively soon.

Alex Reid: Yes, we would.

Paul Wheelhouse: Yes. We have no reason to believe that the consultation would be delayed unduly by the authorities in England and Wales.

Monica Lennon: Thank you.

The Convener: Given concerns among the stakeholders about conflicts of interest in the Accountancy in Bankruptcy's decision-making roles, was any consideration given to introducing new procedures in the regulations to avoid such conflicts?

Paul Wheelhouse: I certainly note ICAS's points, particularly on that issue and on the appointments to the review panel and the potential for the perception of a conflict of interest—if not an actual conflict of interest—to exist. The AIB is a very impressive organisation and it does an excellent job, so I do not want any potential mud to be slung—fairly or unfairly—at the organisation. It would be in the AIB's interest, as well as in the wider interests of transparency, to have the matter addressed.

I do not think that there is any suggestion of impropriety. Although I am sure that the panel members appointed by the AIB are perfectly good individuals, it would be helpful to have them appointed and at least overseen to some extent by whatever independently validated mechanism to ensure that there is no potential for any conflict of interest to be perceived. The issue falls outwith the role of the consolidating regulations that we are discussing today, but we could take it forward under the future review that was discussed.

The Convener: You will look at that in future. You do not really accept ICAS and R3's views that an opportunity has been missed here to make the process more transparent and whiter than white.

Paul Wheelhouse: I accept that it is a legitimate point to address. Given the need to ensure that we have the regulations through in time for 30 November, the timing may not be perfect to address the matter at this time, but I commit to the committee that we will look at and address the issue as soon as is practicable in terms of the AIB's proposed forthcoming review.

The Convener: Okay. Thank you very much.

Rachael Hamilton (South Scotland) (Con): My question involves a point that a number of stakeholders have drawn to our attention. Regulation 5(1)(g) of the draft Bankruptcy (Scotland) Regulations 2016 requires that a money adviser must be licensed to use the common financial statement by the Money Advice Trust. ICAS and R3 suggest that money advisers will, in effect, be regulated by the Money Advice Trust as a result of the requirement. They suggest that it is inappropriate for the matter to be in the control of an unaccountable third party as opposed to a public body. Does the minister share those concerns?

Paul Wheelhouse: I certainly recognise the point that is being made. I have tried to understand why this has arisen—if I may, convener, I will invite colleagues to comment on this shortly—but it is important to recognise that, through the AIB, the Scottish Government is represented on the MAT as an organisation. We therefore have a voice, and if specific Scottish cases were to come forward, we would expect the AIB's perspective to be listened to if a money adviser's conduct or use of appropriate regulation were called into question.

I am confident that Scottish cases would be dealt with by listening to evidence on the circumstances as they applied in Scotland, but I accept that the situation that has arisen might look somewhat odd to a third-party audience. I will ask colleagues to come in on this, but my understanding is that it is because of the various tools that money advisers are using to collect evidence—whether they be financial tools or whatever, which are themselves regulated by the MAT—but nevertheless there is logic in the MAT having oversight of the conduct of individuals who give money advice.

If it helps, convener, I can bring in Graham Fisher and Alex Reid to provide some background on how we have ended up with the MAT in this particular role.

Alex Reid: This goes back to the consultation on the Bankruptcy and Debt Advice (Scotland) Bill reforms and the general approach that a common financial tool for assessing income and expenditure would introduce a level of consistency and transparency into the process and ensure that debtors would, where possible, be treated fairly. After all, there are a number of different mechanisms for calculating income and expenditure.

That was part of the consultation, and it was agreed in the consultation that the common financial statement, which was available through licence from the Money Advice Trust, was the most appropriate to be adopted and prescribed in legislation as the common financial tool. That is what has been operating, and access to the common financial statement has now become critical to—indeed, a prerequisite of—undertaking the money adviser function in a bankruptcy. To the best of our knowledge, however, we do not think that the MAT has ever revoked a licence; it has not informed us that it has done so, and we are certainly not aware of this being an issue in the

past. As a result, we need to react to anything that happens in future on that basis.

Nevertheless, we are where we are, because this particular tool was accepted as being the most effective way of introducing some consistency and transparency into these calculations.

Rachael Hamilton: I just want to push you on this. How you will monitor the situation to ensure that there is accountability?

Alex Reid: Under the legislation, we have to ensure that in, for example, setting debtor contribution orders, the common financial tool is being applied properly and appropriately with regard to income and expenditure. That happens on an on-going basis in dealing with debtor application processes or variations in debtor contributions or, indeed, in looking at the contribution levels in protected trust deeds, which are also calculated using the common financial tool. Operationally, that happens on an on-going basis.

If we had particular concerns about a money adviser or money advice organisation, we would most certainly raise them with the organisation in question. Ultimately, they could be raised with the Money Advice Trust, but we have not yet had to deal with such a situation. On a case-by-case basis, we have queries going backwards and forwards on the way in which the common financial tool has been applied, but as I have said, we monitor these things on an on-going basis.

Paul Wheelhouse: I understand Rachael Hamilton's point, and I think that it is fair to ask whether we will keep an eye on whether this is working in practice. It is certainly something that we can look at in the future policy review; we can come back and see whether there have been any examples of this approach not working in practice, or any concerns that a decision has not taken account of circumstances that apply in Scotland or that we have not had the chance to intervene or have a say.

Those are the kinds of opportunities lent by the review to allow us to find out whether this approach is still appropriate or whether we should do something different. We can have a look at that at the time of the future policy review, if that would help the committee and give reassurance on the role of the MAT and reassurance that it is acting in the interests of good governance of the policy in Scotland.

10:30

Rachael Hamilton: That would be helpful reassurance.

The Institute of Chartered Accountants of Scotland has raised concerns about the absence of an appeal process against a decision by the Accountant in Bankruptcy to withdraw a money adviser's approved status. Should money advisers have a right of review against such a decision?

Paul Wheelhouse: On the general principle, absolutely. Everyone deserves the right to have their say if they are charged with something and to be able to rebut the charges. The principles of good natural justice, if you like, that apply in our courts are very important. I agree that that is important and I have asked my colleagues who are with me today to look at that in the context of the future policy review.

The more that we can design out the need for someone to use a judicial review as a means of questioning a decision that has been made about them, the better. A judicial review is potentially a heavy-handed approach and some JRs can be very expensive for those involved. Ideally, we would have more of an administrative justice-type route, which is lower cost, fact based, hopefully less contentious and able to deal with cases quickly. We will look at what can be done there.

To provide reassurance, I should say that there is some protection through judicial review, which is a route for someone to appeal or raise concerns about the process that has been undertaken to revoke their licence. However, it is not necessarily the most efficient means of doing that, as a judicial review is a relatively onerous process.

I am certainly happy to look at the issue in the future policy review, to see whether some improvement can be made. It will provide confidence in the system if there is an appropriate course by which someone can appeal if they feel that they have been done an injustice.

Rachael Hamilton: Do you have a timescale for what you are proposing?

Paul Wheelhouse: Do you mean in terms of the future policy review?

Rachael Hamilton: Yes.

Paul Wheelhouse: Not as yet, but I will happily come back to the committee. I want to discuss that with the AIB, to see whether we can get some certainty about it. I am not aware that there is a fixed timescale, but Alex Reid can update me on whether something has been determined.

Alex Reid: There is not a fixed timescale, but we have discussed the need for a policy review of all aspects of the reforms that were introduced. The reforms are quite wide ranging. Although they were introduced in April 2015, for some of them—for example the policies on debtor discharge and variation on debtor contribution orders—we do not have a great deal of experience to learn from, because the processes happen some way down the line in the administration of a case.

We recognise that a significant amount of change was introduced at that time, and it will be subject to policy review. We are discussing the appropriate time to undertake that, but it has not been fixed just yet.

Paul Wheelhouse: Clearly, the issue is part of a family of issues that have been discussed today that are perhaps beyond the scope of the secondary legislation. However, they are worthy issues that are worth taking forward and having further discussion around.

We recognise that ICAS, R3 and others—and, indeed, the committee today—have raised legitimate issues, but we feel that it is more appropriate to deal with them separately from the regulations. The regulations will bring into effect the intent of Parliament when it passed the 2016 act unanimously, and we can deal with the other issues that arise in the consultation through a separate vehicle.

The Convener: As no one has anything to add, we will move on to item 2, which is the debate on the three motions to recommend approval of the affirmative instruments. I remind officials that they cannot participate in the formal debate on the motions. In accordance with rule 10.6.3 of standing orders, the debate can last no longer than 90 minutes. I invite the minister to move motions S5M-02136, S5M-02137 and S5M-02138.

Motions moved,

That the Delegated Powers and Law Reform Committee recommends that the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] be approved.

That the Delegated Powers and Law Reform Committee recommends that the Protected Trust Deeds (Scotland) Amendment Regulations 2016 [draft] be approved.

That the Delegated Powers and Law Reform Committee recommends that the Bankruptcy (Scotland) Regulations 2016 [draft] be approved.—[*Paul Wheelhouse*]

The Convener: Do members wish to make any contributions?

Members: No.

The Convener: That was a relatively short debate, which I am sure you are glad about, minister. However, you might wish to respond and move matters forward.

Paul Wheelhouse: I am grateful for the committee's consideration of the regulations. I am happy to take forward the points that we discussed about the further work that needs to be done. It is helpful, to the Government and the AIB, that the committee has had such detailed oversight of the regulations, so thank you for your consideration.

The Convener: I will go through each instrument and its associated motion in turn. On the Protected Trust Deeds (Forms) (Scotland) Regulations 2016, the references to section 170(1)(i) of the Bankruptcy (Scotland) Act 2016 in the entry for form 3 in the list of forms to be used in connection with protected trust deeds contained in the schedule, and in the heading of form 3 in the schedule, should be references to section 171(1)(i). Does the committee agree to draw the regulations to the Parliament's attention on the general reporting ground, as they contain two minor drafting errors?

Members *indicated agreement.*

The Convener: Does the committee agree to welcome the Scottish Government's intention to correct the errors at the next legislative opportunity?

Members *indicated agreement.*

The Convener: The question is, that motion S5M-02136 be agreed to.

Motion agreed to,

That the Delegated Powers and Law Reform Committee recommends that the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] be approved.

The Convener: No points have been raised by our legal advisers on the draft Protected Trust Deeds (Scotland) Amendment Regulations 2016. Is the committee content with the instrument from a technical perspective?

Members *indicated agreement.*

The Convener: The question is, that motion S5M-02137 be agreed to.

Motion agreed to,

That the Delegated Powers and Law Reform Committee recommends that the Protected Trust Deeds (Scotland) Amendment Regulations 2016 [draft] be approved.

Members *indicated agreement.*

The Convener: Regulation 22 of the draft Bankruptcy (Scotland) Regulations 2016 makes provision in respect of the conversion into sterling of a creditor's claim that is stated in a foreign currency. The regulation provides that the manner of conversion is to be at

"a single exchange rate of for that currency",

as

"determined by the trustee with reference to the exchange rates prevailing ... on the date of sequestration".

The Scottish Government has agreed to amend that and lay an amending instrument, which we welcome. Does the committee nonetheless agree to draw the draft instrument to the Parliament's attention under reporting ground (h), as the meaning of regulation 22 could be clearer?

Members *indicated agreement.*

The Convener: The draft instrument contains additional drafting errors. First, the definition of "common financial tool" in regulation 2 refers incorrectly to regulations 14 to 16. The reference should instead be to regulations 15 to 17. The committee may wish to accept the Scottish Government's proposal to correct the error as a printing point in the minister's signing copy, since the error is minor and highly self-evident.

Form 27 in schedule 1 to the regulations refers incorrectly to section 140(1) of the Bankruptcy (Scotland) Act 1985, as amended. The reference should instead be to section 140(1) of the Bankruptcy (Scotland) Act 2016. The committee may wish to note that the Scottish Government intends to correct the error at the next legislative opportunity.

In the notes to form 26, the third bullet point should refer to a fine imposed in a justice of the peace court or a district court, rather than to a fine imposed in a district court only. The committee may wish to note that the Scottish Government intends to correct the error at the next legislative opportunity.

Does the committee agree to draw the draft instrument to the Parliament's attention under the general reporting ground, on account of those drafting errors?

Members *indicated agreement.*

The Convener: Does the committee agree to welcome the Scottish Government's intention to correct those errors?

Members *indicated agreement.*

The Convener: The question is, that motion S5M-02138 be agreed to.

Motion agreed to,

That the Delegated Powers and Law Reform Committee recommends that the Bankruptcy (Scotland) Regulations 2016 [draft] be approved.

Members *indicated agreement.*

The Convener: It remains only for me to thank the minister and his officials for their evidence. I suspend the meeting for a few minutes while he and his team take their leave.

10:41

Meeting suspended.

10:43

On resuming—

The Convener: Item 3 is consideration of a negative instrument—the Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016 (SSI 2016/295)—which is part of the package of instruments that are connected to the Bankruptcy (Scotland) Act 2016. No points have been raised by our legal advisers on the instrument. Is the committee content with it from a technical perspective?

Members *indicated agreement.*

The Convener: From a lead committee perspective, is the committee content to note the instrument and make no recommendation?

Members *indicated agreement.*

The Convener: Item 4 is consideration of an instrument that is not subject to any parliamentary procedure—the Bankruptcy (Scotland) Act 2016 (Commencement) Regulations 2016 (SSI 2016/294 (C 27))—which is part of the package of instruments that are connected to the Bankruptcy (Scotland) Act 2016. No points have been raised by our legal advisers on the instruments. Is the committee content with the instrument from a technical perspective?

Members *indicated agreement.*

The Convener: From a lead committee perspective, is the committee content to note the instrument and make no recommendation?

Members *indicated agreement.*

The Convener: In relation to all the bankruptcy instruments, does the committee wish to draw the policy evidence that we have taken today to the attention of the Economy, Jobs and Fair Work Committee?

Members *indicated agreement.*

The Convener: I have been remiss in not having announced at the beginning of the meeting that we received apologies from David Torrance. We are sorry that he cannot be with us.

Instruments subject to Affirmative Procedure

10:45

The Convener: Under agenda item 5, no points have been raised by our legal advisers on the following two affirmative instruments.

Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016 [Draft]

Crofting Commission (Elections) (Scotland) Amendment Regulations 2016 [Draft]

The Convener: Is the committee content with those instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:46

The Convener: Under item 6, no points have been raised by our legal advisers on the following two negative instruments.

Act of Sederunt (Fees of Solicitors and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment) 2016 (SSI 2016/316)

General Pharmaceutical Council (Amendment of Miscellaneous Provisions) Rules Order of Council 2016 (SI 2016/1008)

The Convener: Is the committee content with those instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 (SSI 2016/313)

10:46

The Convener: Form 6.1-A in schedule 1 to the instrument contains drafting errors. In the statement of facts, some text is missing from the second and alternative subparagraph (b) of paragraph 3, where the petitioner is a trustee under a trust deed. The paragraph should read, "It would be in the best interests of the creditors that an award of sequestration be made". The italicised note in the first subparagraph (b) of paragraph 3, where the petitioner is a trustee under a trust deed, should refer to the debtor rather than to the respondent. Does the committee agree to draw the instrument to the Parliament's attention on the general reporting ground, on account of those drafting errors?

Members *indicated agreement.*

The Convener: Does the committee agree to welcome the plans of the Lord President's private office to correct those errors before the instrument comes into force on 30 November?

Members *indicated agreement.*

The Convener: No points have been raised by our legal advisers on the following five instruments.

Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016 (SSI 2016/312)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 4) (Simple Procedure) 2016 (SSI 2016/315)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Postal Administration) 2016 (SSI 2016/318)

Act of Sederunt (Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment) (Serious Crime Prevention Orders etc) 2016 (SSI 2016/319)

Scottish Fiscal Commission Act 2016 (Commencement and Transitory Provision) Regulations 2016 (SSI 2016/326 (C 30))

The Convener: Is the committee content with those instruments?

Members *indicated agreement.*

The Convener: In relation to SSI 2016/315, does the committee agree to welcome the fact that, in respect of an undertaking previously given by the Lord President's private office, various provisions in the instrument promptly correct errors that the committee reported on in relation to the Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200)?

Members *indicated agreement.*

The Convener: Thank you very much for your attention and help this morning.

Meeting closed at 10:50.

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