BANKRUPTCY (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Bankruptcy (Scotland) Bill (“the Bill”). It describes provisions in the Bill conferring power to make subordinate legislation.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The primary aim of the Bill is to consolidate the legislation relating to bankruptcy law in Scotland by bringing together enactments of bankruptcy into one statute. The Bill will put Scotland’s bankruptcy legislation in one place, aiding the accessibility and understanding of bankruptcy law for practitioners and those affected by it.

4. The following abbreviations are used in in this Memorandum:-

   “AiB” - the Accountant in Bankruptcy
   “MAP” – the Minimal Asset Process for sequestrations with few assets under section 5(2ZA) of schedule A1 of the 1985 Act / section 2(2) and schedule 1 of the Bill
   “the 1985 Act” - the Bankruptcy (Scotland) Act 1985 (c.66)
   “the 1993 Act” - the Bankruptcy (Scotland) Act 1993 (c.6)
   “the 2007 Act” - the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)
   “the 2010 Act” - the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6)
   “the 2014 Act” - the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11)
   “the Protected Trust Deeds Regulations” - the Protected Trust Deeds (Scotland) Regulations 2013¹

EXISTING DELEGATED POWERS

5. The Bill as a consolidation re-enacts a significant number of powers to make subordinate legislation which already exist in Scotland’s bankruptcy legislation. These powers are discussed below and in the table in the Annex. In each case set out in the Annex the powers reflect existing powers in the 1985 Act and no change is made to the scope, or to the form, of those powers.

¹ SSI 2013/318 as amended by SSI 2014/290 and SSI 2015/149.
6. There are approximately 95 specific subordinate powers consolidated in the Bill – (depending on whether linked powers are counted together). Around three quarters relate to powers on matters of detail to prescribe forms, periods of time and amounts of money or rates/fractions. Approximately 39 of those are to prescribe the form of documents for the purposes of the Act. A further 24 represent powers to amend amounts, fractions or rates, or to set fees, or are in relation to the calculation and verification of creditor claims in foreign currency converted into sterling (see also section 227 of the Bill derived from section 72A of the 1985 Act which provides a general power to vary references to time, money and fractions in the Act). There are 9 powers to amend the time periods within which things are done.

7. Save where explained below, the reasons for the continuation of the power by including it in the consolidation Bill, and the choice of procedure, remain as they were when the Scottish or UK Parliament passed the existing power.

8. Those reasons are the usual reasons of flexibility to alter and update administrative provisions, including principally forms, to take account of changes in the value of money and adaptability of time periods to ensure that administrative machinery works and to respond to changing practices on the ground. Of the remaining powers in the Bill not discussed more fully in paragraphs 12 to 27 below, only the following have not been considered by the Scottish Parliament:-

- section 6(8) (applying Act to limited partnerships)\(^2\)
- sections 103(4) and 106(4) (Secretary of State power to provide for the calculation and verification of values and amounts re recovery of excessive pension contributions)\(^3\)
- sections 190(3)(d) and 191(1)(d) (others on whom an application and affidavit under the provision on conversion of a protected trust deed into sequestration by a Member State liquidator, and other matters that affidavit should contain)\(^4\)
- section 230(1) (change to the definition of ‘associate’)\(^5\)

9. It is considered that these powers are required to allow particular provision to be made for a particular type of body – limited partnerships – which is not common, the provisions on pensions also allow for flexibility about changes in the value of money or changes in practice in responding to complex pension arrangements, and in anti-avoidance provision which may have to change in case of risk of abuse or unforeseen circumstances, or changes in practice on the ground.

10. For the remaining existing powers which have been considered by the Parliament, reference is made to the reason for taking the powers and the level of scrutiny in the Delegated Powers Memorandum and wider delegated powers consideration by the Parliament on the Bills which led to the 2007 Act, the 2010 Act or the 2014 Act.

\(^2\) derived from section 6(7) of the 1985 Act
\(^3\) derived from sections 36C(4) and 36F(3) of the 1985 Act
\(^4\) derived from sections 59A(2)(c) and 59B(1)(d) of the 1985 Act
\(^5\) derived from section 74(7) of the 1985 Act
DELEGATED POWERS MODIFIED AS A RESULT OF CONSOLIDATION

11. As part of the consolidation of enactments, in certain cases the Bill makes minor modifications to the structure and form of delegated powers available. These powers are discussed more fully in paragraphs 12 to 24 below.

Section 194(1) – Power to make regulations modifying Part 14 of the Bill (Protected trust deeds)

Power conferred on:          the Scottish Ministers
Power exercisable by:         regulations made by Scottish statutory instrument
Parliamentary procedure:      affirmative

 Provision


13. Section 194 of the Bill accordingly consolidates the power currently in paragraph 5 of Schedule 5 to the 1985 Act to make provision for the conditions of protection of trust deeds, and related matters, and also make amendments which appear necessary as a consequence of the regulations. It is drawn so as to maintain the scope of the existing power.

Reason for taking power

14. The protected trust deed power was considered by the Scottish Parliament when it was added by the 2007 Act (in section 18(1) of the Bill for the 2007 Act, which became section 20 of that Act). The reason for taking that power was that secondary legislation allowed flexibility to continue monitoring and improving the threshold for and administration of that form of insolvency.

15. Though also part of the consolidation exercise, that reasoning continues to be the case. The provision maintains the power to modify the regime for protected trust deeds, in line with the existing law. The regime for protected trust deeds is sensitive to practice in the sector of voluntary trust deeds for the benefit of creditors, and it is important for powers to have powers available to react to changes of practice in this area to ensure the protection of debtors and the wider body of creditors.

Choice of procedure

16. During the parliamentary passage of the Bill for the 2007 Act, the power was made subject to affirmative procedure, and the affirmative procedure is preserved in consolidation in the Bill, due to the width of the powers available.

Powers to prescribe forms in respect of protected trust deeds

sections 166(2)(b) – form of request for excluding secured creditor
sections 166(2)(c) – form of agreement for excluding secured creditor
section 169 - form of notice in the register of insolencies
section 170(1)(b) – form of creditor statement of claim sent to creditors
section 170(1)(e) – form of statement of trustee’s anticipated realisations
section 174(2) – form of instruction by debtor to employer of deductions from earnings
section 174(3) – form of instruction by trustee to debtor’s employer of deductions from earnings
section 175(1) – form of trustee agreement not to realise and relinquish heritable estate
section 181(2) – form of trustee report on the management of the trust
section 183(1)(a) – form of setting out fixed fee
section 183(1)(b) – form of setting out additional fee
section 184(1)(b) – form of application for discharge of debtor
section 184(2)(a) – form of trustee statement of debtor’s compliance and cooperation
section 186(3) – form of application for discharge of trustee
section 186(9) – form of statement of realisation and distribution of estate

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provisions

17. In consolidating the Protected Trust Deeds measures to primary legislation, specific powers are taken in the above provisions to prescribe the forms of the various documents for which forms are currently prescribed in the Protected Trust Deeds (Scotland) Regulations.

18. The current paragraph 5 of Schedule 5 to the 1985 Act allows the Scottish Ministers by regulations to make provision for the conditions which require to be fulfilled for a trust deed to be granted the status of protected trust deed, the consequences of that status, creditors’ rights, discharge from debts, and the administration of the trust deed. This includes inter alia the power to prescribe forms. In consolidating these powers in primary legislation, the power to make specific provision for forms is preserved where existing provisions is made in the Protected Trust Deeds Regulations in relation to forms.

Reason for taking powers

19. This maintains the power of the Scottish Ministers to set forms where specific forms are required in the Protected Trust Deeds Regulations in the law which is being consolidated. The specific powers are taken where forms are provided for in those Regulations, in line with the existing law. This is desirable for reasons of flexibility and ease of updating and in particular to allow the forms to be updated and adapted to practice on the ground (particularly useful in this area as noted in paragraph 15 above).
Choice of procedure

20. The affirmative procedure is provided for in line with the existing protected trust deeds power in the 1985 Act consolidated in the Bill.

Section 237(2) – power to commence the Bill

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: laid, no procedure

Provision

21. Section 237(2) of the Bill allows the Scottish Ministers by regulations to commence the Bill. Subsection (3) allows different days to be appointed for different purposes.

Reason for taking power

22. To allow the Bill to be commenced at the same time as consolidating the subordinate legislation under the 1985 Act. While new subordinate legislation is not legally necessary as a result of the translation provisions in the Bill which will continue the effect of existing legislation made under enabling provisions in the 1985 Act, the intention is to do so. The power will allow the existing subordinate legislation under the 1985 Act to be consolidated and commenced at the same time as the commencement of the Bill and of the matters to be covered by the section 104 Order.

23. Section 237(3) confers the latitude that section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 would normally confer on a power to commence by order. It is not anticipated that this latitude will be used, but it is proposed for the unlikely event that any unanticipated operational difficulties come to light.

Choice of procedure

24. No procedure is provided for aside from laying in Parliament in line with the Interpretation and Legislative Reform (Scotland) Act 2010, which is typical for commencement powers.

SECTION 234(2) – SAVING EXISTING POWERS IN ENACTMENTS REPEALED, REVOKED OR AMENDED

25. This is not a delegated power in its own right, but is mentioned for completeness. Section 234(2) of the Bill saves existing powers to repeal, revoke or amend any enactment repealed, revoked or amended by the Bill. This continues any delegated powers available to modify existing subordinate legislation.

26. The reason for saving these powers, which preserves the existing powers, is in particular in relation to existing savings or transitional arrangements. For instance, under existing commencement powers in enactments repealed, revoked or amended by the Bill, e.g. section
57(3) of the 2014 Act, provision is made to save legal arrangements or make transitional provision for old regimes operationally for sequestrations where the petition was presented, or the debtor application made, before certain dates, e.g. 1st April 2015 in respect of amendments made by the 2014 Act\(^7\). The same applies to arrangements for protected trust deeds granted before certain dates.

27. Those savings or transitional arrangements for sequestrations and trust deeds under old regimes preserved in those transitionals may have to be amended in future to keep them in line with changes to the law which it was desirable to make across all extant sequestrations or trust deeds, where that is possible and appropriate legally. Accordingly, these powers are consolidated in making transition to the Bill regime. The powers would be exercisable under whichever procedure applies in the current law.

\(^7\) See the Bankruptcy and Debt Advice (Scotland) Act (Commencement No. 2, Savings and Transitionals) Order 2014 (SSI 2014/261, amended by SSI 2015/54), in particular article 4 of that Order.
This document relates to the Bankruptcy (Scotland) Bill (SP Bill 83) as introduced in the Scottish Parliament on 30 October 2015

ANNEX

LIST OF DELEGATED POWERS IN THE BILL DERIVED FROM THE BANKRUPTCY (SCOTLAND) ACT 1985

<table>
<thead>
<tr>
<th>BILL PROVISION</th>
<th>DERIVATION</th>
<th>SUMMARY OF POWER</th>
<th>PARLIAMENTARY PROCEDURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2(2) and (3)(b) and (c)</td>
<td>1985 Act, section 5(2ZA) and 5(2ZB)(b) and (c); 2014 Act, section 5 - Debtor application</td>
<td>Power of Scottish Ministers to prescribe and modify the criteria which determines eligibility for MAP, to prescribe a value for vehicles which will determine whether they are to be regarded as assets, and to prescribe a type of property which is not to be regarded as an asset.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section 2(4) and (5)</td>
<td>1985 Act, section 5(2ZC) and 5(2ZD); 2014 Act, section 5 - Debtor application</td>
<td>More general powers of Scottish Ministers to modify the criteria which determines MAP eligibility, and make provision for determining the value of a debtor's assets.</td>
<td>Affirmative</td>
</tr>
<tr>
<td>Section 2(8)(a)</td>
<td>1985 Act, section 5(2B)(a) and (c)(ib); 2007 Act, section 25(a); 2010 Act, section 9(1)(c) - Sequestration by debtor application</td>
<td>Power of Scottish Ministers to prescribe certain criteria used to determine a debtor's eligibility to apply for sequestration, specifically; the minimum level of debts and the period within which a debtor must have been granted a certificate of sequestration of their</td>
<td>Affirmative</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Section</th>
<th>1985 Act, section 5(2D); 2007 Act, section 26</th>
<th>Power of Scottish Ministers to prescribe the time period in which a creditor must serve a debt advice and information package on a debtor prior to the presentation of a petition for sequestration.</th>
<th>Negative</th>
</tr>
</thead>
</table>

| Section 3 | 1985 Act, section 5C(1)(d); 2014 Act, section 1(2) | Power of Scottish Ministers to prescribe categories of advice which a debtor must obtain from a money adviser before making an application for sequestration. | Negative |

| Section 4(1)(d) | 1985 Act, section 5C(2)(b); 2014 Act, section 1(2) | Power of Scottish Ministers to prescribe descriptions or classes of money adviser from whom debtors are required to obtain advice. | Affirmative |

| Section 4(2)(b) | 1985 Act, section 6(7) | Power of Scottish Ministers to modify the provisions relating to the sequestration of a limited partnership. | Negative |

| Section 6(8) | 1985 Act, section 5(4) | Power of Scottish Ministers to prescribe particular criteria used to determine whether creditors are qualified creditors, specifically; powers to prescribe the required minimum level of debt. | Affirmative |

<p>| Section 7(1) | 1985 Act, section 5(4) | Power of Scottish Ministers to prescribe particular criteria used to determine whether creditors are qualified creditors, specifically; powers to prescribe the required minimum level of debt. | Affirmative |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Legislation</th>
<th>Power of Scottish Ministers</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>9(4)</td>
<td>Certificate for sequestration</td>
<td>1985 Act, section 5B(5), 2010 Act, section 9(2)</td>
<td>make provisions about the certification route into bankruptcy by prescribing the form and manner in which a certification must be made, the fee charged in connection with granting the certificate, and the period for which the certificate is valid.</td>
<td>Affirmative</td>
</tr>
<tr>
<td>13(3)</td>
<td>Time limits for sequestration of a limited partnership</td>
<td>1985 Act, section 8(2); 2014 Act, section 46(1)</td>
<td>vary or set time limits for presenting a petition for the sequestration of a limited partnership.</td>
<td>Negative</td>
</tr>
<tr>
<td>14(2)</td>
<td>Time limits for sequestration of a limited partnership</td>
<td>1985 Act; section 8A(2); 2014 Act, section 46(2)</td>
<td>vary or set time limits for presenting a debtor application for the sequestration of a limited partnership.</td>
<td>Negative</td>
</tr>
<tr>
<td>16(1)(i)</td>
<td>Meaning of “apparent insolvency”</td>
<td>1985 Act, section 7(1)(d)</td>
<td>prescribe certain criteria which forms part of a circumstance used to constitute “apparent insolvency”, specifically; the minimum amount of debt and the form of demand to be served on a debtor.</td>
<td>Negative</td>
</tr>
<tr>
<td>19(1)</td>
<td>Creditor’s oath</td>
<td>1985 Act, section 11(1)</td>
<td>prescribe the form of oath which must be</td>
<td>Negative</td>
</tr>
</tbody>
</table>
produced by or on behalf of a creditor when presenting a petition for sequestration, or when concurring in a debtor application for sequestration.

<table>
<thead>
<tr>
<th>Section</th>
<th>26(6) and (8)</th>
<th>1985 Act, section 14(4) and (4B); 2014 Act, section 48 - Effect of sequestration: renewal of period of inhibition etc</th>
<th>Power of Court of Session to prescribe the form of memorandum which a trustee may send to the Keeper of the Register of Inhibitions to renew the period of an inhibition.</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section</td>
<td>46(2)(a)</td>
<td>1985 Act, section 22(2)(a) - Submission of claims for voting purposes</td>
<td>Power of Scottish Ministers to prescribe the form of statement of claim which a creditor submits to the trustee for the purpose of voting at a statutory meeting.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section</td>
<td>46(6)</td>
<td>1985 Act, section 22(6) - Submission of claims for voting purposes</td>
<td>Power of Scottish Ministers to prescribe circumstances where a creditor may state the amount of their claim in foreign currency for the purpose of voting at a statutory meeting.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section</td>
<td>48(1)(a)</td>
<td>1985 Act, section 23(1)(a) - Proceedings before trustee vote</td>
<td>Power of Scottish Ministers to prescribe the manner in which a creditor claim stated in foreign currency shall be converted into sterling for the purpose of assessing the claim at the commencement of the statutory meeting.</td>
<td>Negative</td>
</tr>
</tbody>
</table>
**Sections 51(14) and 54(4)**  
1985 Act, section 2(8); 2014 Act, section 9(1) - Statement of undertakings  
Power of Scottish Ministers to prescribe the form of statement of undertakings which a debtor is required to sign to ensure they are aware of their duties and obligations during the bankruptcy process.  
Negative

**Section 78(4)**  
1985 Act, section 31(1B); 2007 Act, section 17(1)(a) - Vesting of estate at date of sequestration  
Power of Scottish Ministers to prescribe a period, from after the sequestration is registered, during which time it is incompetent for the trustee or any person deriving title from the trustee to complete title to any heritage in Scotland vested in the trustee.  
Negative

**Section 87(8)**  
1985 Act, section 32(9A); 2007 Act, section 19(1) - Dealings and circumstances of debtor after sequestration  
Power of Scottish Ministers to prescribe the form of notice abandoning the trustee’s interest in any heritable property to the debtor.  
Negative

**Section 89(1)**  
1985 Act, section 5D(1) and (2); 2014 Act, section 3(1) - Debtor’s contribution: common financial tool  
Power of Scottish Ministers to specify a method (the common financial tool), of assessing a debtor’s income, liabilities, allowable expenditure, and contribution, if any, to be made from income.  
Affirmative

**Section 94(7)**  
1985 Act, section 32E(7); 2014 Act, section 4 - Debtor  
Power of Scottish Ministers to make regulations governing the instructions a debtor provides to a
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contribution order third party authorising them to make deductions from earnings or other income. In particular, provision can be made about the form of instruction, the manner in which the instruction affects the recipient, and the consequences for failing to comply with an instruction to pay.

Section 103(4) 1985 Act, section 36C(5); the Welfare Reform and Pensions Act 1999 (c.30), section 16; the Pensions Act 2007 (c.22), schedule 5 paragraph 1 - Supplementary provisions for recovery of excessive pension contributions

Powers of Secretary of State to prescribe a person who can approve the manner of, or prepare guidance on, the calculation and verification of any value or amount used in pursuance of an order to recover excessive pension contributions.

Section 106(4) 1985 Act, section 36F(4); the Welfare Reform and Pensions Act 1999(c.30), schedule 12 paragraph 69; the Pensions Act 2007 (c.22), schedule 5 paragraph 2 - Supplementary provisions for recovery orders

Powers of Secretary of State to prescribe a person who can approve the manner of, or prepare guidance on, the calculation and verification of any value or amount used in pursuance of a recovery order.

Section 111(5) 1985 Act, section 43(2) - Money received by

Power of Scottish Ministers to prescribe the maximum sum of

8 To be consolidated in article 5 of the proposed Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 under section 104 of the Scotland Act 1998.

9 To be consolidated in article 5 of the proposed Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 under section 104 of the Scotland Act 1998.
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<table>
<thead>
<tr>
<th>Section</th>
<th>1985 Act, section 39A(7); 2007 Act, section 19(2)</th>
<th>Power of Scottish Ministers to prescribe circumstances which would allow the sheriff to extend the period after which a debtor’s family home would cease to be part of the sequestrated estate and reinvest in the debtor.</th>
<th>Negative</th>
</tr>
</thead>
</table>

| Section | 1985 Act, section 39A(8); 2007 Act, section 19(2) | Power of Scottish Ministers to: shorten the period after which a debtor’s family home ceases to be part of the sequestrated estate and reinvests in the debtor; prescribe circumstances in which section 112 does not apply; prescribe circumstances in which the sheriff may disapply this section; make provision requiring the trustee to give notice regarding the application of this provision; make provision about compensation, and; make such provision considered necessary or expedient as a result of regulations made under section 112(7)(a) to (e). | Negative |

| Section | 1985 Act, section 39A(4); 2007 Act, section 19(2) | Power of Scottish Ministers to modify the steps preventing a debtor’s home from | Affirmative |

trustee money which may be retained in a trustee’s hands.
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section 19(2) reinvesting.

Section 113(5)  1985 Act, section 40(3B); 2010 Act, section 11(c) - Power in relation to a debtor’s family home
Power of Scottish Ministers to prescribe the form and manner of the notice of proceedings to be sent to the relevant local authority informing them of an impending application to the sheriff seeking permission to sell a debtor’s family home.

Section 116(2)  1985 Act, section 43A(2); 2007 Act, section 30 - Debtor’s requirement to give account of state of affairs
Power of Scottish Ministers to prescribe, in certain circumstances, the form in which an account of a debtor’s current state of affairs shall be given to the trustee.

Section 117(1)  1985 Act, section 43B(1) and (5); 2014 Act, section 2 - Financial education for debtor
Power of Scottish Ministers to prescribe the content, format and delivery method of courses in financial education.

Section 119(6)  1985 Act, section 45(3) - Public examination
Power of Scottish Ministers to prescribe the form of notice a trustee must issue following an order by a Sheriff requiring a debtor or relevant person to attend court for public examination.

Section 122(9)  1985 Act, section 22(2) – Submission of claims
Power of Scottish Ministers to prescribe the form of a creditor’s statement of claim to the trustee in
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<tr>
<th>Section 125(1)</th>
<th>1985 Act, section 22(6) – Further provision as to claims</th>
<th>Power of Scottish Ministers to prescribe the circumstances in which creditors may state the amount of the creditor’s claim in foreign currency.</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 126(5)</td>
<td>1985 Act, section 49(3) – Adjudication of claims</td>
<td>Power of Scottish Ministers to prescribe the manner in which a creditor claim stated in foreign currency shall be converted into sterling for the purpose of adjudicating on the claim.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section 129(10)</td>
<td>1985 Act, section 51(7) – Priority in distribution</td>
<td>Power of Scottish Ministers to prescribe the rate of interest at the date of sequestration.</td>
<td>Negative</td>
</tr>
<tr>
<td>Sections 137(2) and 138(2)</td>
<td>1985 Act, section 54(2) and 54A(2); 2014 Act, section 17 – Discharge of debtor</td>
<td>Power of Scottish Ministers to prescribe the form in which the AiB certifies that a debtor has been granted discharge.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section 140(2)</td>
<td>1985 Act, section 54C(2); 2014 Act, section 7(1) – Discharge of debtor</td>
<td>Power of Scottish Ministers to prescribe the form of the certificate of discharge under MAP.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section 141</td>
<td>1985 Act, section 54D(2)(a) and (c); 2014 Act, section 19 – Deferral of discharge where the debtor cannot be traced</td>
<td>Power of Scottish Ministers to prescribe the form in which the trustee must give notice to a debtor of deferral of their discharge, and to prescribe the form in which the trustee must</td>
<td>Negative</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Section 142(2) and (5)</th>
<th>1985 Act, section 54E(2) and (5); 2014 Act, section 19 - Deferral of discharge where the debtor cannot be traced: new trustee</th>
<th>Power of Scottish Ministers to prescribe the form in which the trustee must apply to the AiB for authority to resign office, and the form in which the AiB must give notice to the trustee AiB has been granted authority to resign where a debtor who cannot be traced has had their discharge deferred indefinitely.</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 143</td>
<td>1985 Act, section 54F(5); 2014 Act, section 19 - Deferral of discharge where the debtor cannot be traced: subsequent debtor contact</td>
<td>Power of Scottish Ministers to prescribe the form in which the AiB may certify that a debtor has been discharged.</td>
<td>Negative</td>
</tr>
<tr>
<td>Section 146(2)</td>
<td>1985 Act, section 55A(2); 2014 Act, section 7(2) - Power to prescribe the amount of credit</td>
<td>Power of Scottish Ministers to vary the maximum amount of credit a debtor awarded sequestration under MAP can obtain, and the level of debt above which such a debtor will be unable to obtain additional credit, during the period of six months following discharge without firstly informing the person providing credit of their status.</td>
<td>Negative</td>
</tr>
</tbody>
</table>
**Section 152(1)**  
1985 Act, section 58B(1); 2014 Act, section 21 - Assets discovered after discharge of trustee: appointment of trustee  
Power of Scottish Ministers to vary the threshold value for assets which come to light following the trustee’s discharge; that threshold having to be exceeded to allow the AiB to reappoint the original trustee, or appoint AiB as trustee.  
Negative

**Section 190(3)(c)**  
1985 Act, section 59A(2)(c); the Insolvency (Scotland) Regulations 2003 (S.I. 2003/2109) - application for conversion to sequestration  
Power of Scottish Ministers to prescribe which persons an application by a liquidator appointed in another EU member State to convert a protected trust deed into sequestration shall be served upon.  
Negative

**Section 191(1)(d)**  
1985 Act, section 59B(1)(d); S.I. 2003/2109 - Contents of affidavit  
Power of Scottish Ministers to prescribe the contents of any affidavit supporting an application by a liquidator appointed in another EU member State for conversion of a protected trust deed into sequestration.  
Negative

**Section 194**  
1985 Act, schedule 5 paragraph 5; 2007 Act, section 20(1) - Modification of provisions relating to protected trust deeds  
Power of Scottish Ministers to make provision regarding the conditions to be fulfilled for a trust deed to be granted the status of a protected trust deed, and related matters, and also make amendments which appear necessary as a consequence of the  
Affirmative
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<table>
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<tr>
<th>Section</th>
<th>1985 Act, section 1A(1)(b); 2014 Act, section 22 - Register of Insolvencies</th>
<th>Power of Scottish Ministers to prescribe the form of the Register of Insolvencies, including particulars which shall be entered into the Register of Insolvencies.</th>
<th>Negative</th>
</tr>
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<tbody>
<tr>
<td><strong>Section 205(1)</strong></td>
<td>1985 Act, section 69A; 1993 Act, section 8 - Fees for the AiB</td>
<td>Powers of Scottish Ministers to prescribe the fees and outlays to be paid to the AiB in respect of carrying out AiB functions under the 1985 Act, the time and manner of the payments, and the circumstances for any exemption or modification.</td>
<td>Negative</td>
</tr>
<tr>
<td><strong>Section 205(2)</strong></td>
<td>1985 Act, section 69A; 1993 Act, section 8 - Fees for the AiB</td>
<td>Powers of Secretary of State to prescribe the fees and outlays paid to AiB in respect of AiB functions under the Insolvency Act 1986, the time and manner of the payments, and the circumstances for any exemption or modification.</td>
<td>Negative</td>
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<td><strong>Section 210(2) and (4)</strong></td>
<td>1985 Act, section 62; 2014 Act, section 23(3) - Sederunt book</td>
<td>Power of Scottish Ministers to regulate the period which the AiB must make the sederunt book available for, to prescribe conditions in accordance with</td>
<td>Negative</td>
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</tbody>
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10 To be consolidated in article 5 of the proposed Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 under section 104 of the Scotland Act 1998.
This document relates to the Bankruptcy (Scotland) Bill (SP Bill 83) as introduced in the Scottish Parliament on 30 October 2015

which that duty is to be carried out, and to modify the information which the trustee must include in the sederunt book.

| Section   | 218(13) | 1985 Act, section 67(9); 2007 Act, section 24(4) - Modification of offences | Power of Scottish Ministers to prescribe the maximum amount of credit a debtor can obtain and a level of debt above which a debtor will be unable to obtain additional credit, without firstly providing relevant information of their status to the person supplying the credit. | Negative |

| Section 221 | 1985 Act, section 69 - Outlays of insolvency practitioner in acting as interim trustee or trustee | Power of Secretary of State to prescribe the premium, or part of the premium, of any bond of caution or other security required by an insolvency practitioner, to be taken as part of the trustee’s outlays. | Negative |

| Section 223 | 1985 Act, section 71B; 2007 Act, section 5 - Disqualification provisions: power to make orders | Power of Scottish Ministers to make an order in relation to a disqualification provision. | Affirmative |

| Section 224 | 1985 Act, section 71C; 2014 Act, section 36 - Regulations: applications to the AiB etc | Power of Scottish Ministers to regulate the procedures for miscellaneous applications to the AiB, applications to the AiB for review, and any other decision to be made by the AiB. | Affirmative where it adds, replaces or omits part of the text of an Act or an Act of the Scottish Parliament. Otherwise negative |
| Section | Description | 1985 Act References | 1993 Act References | 2014 Act References | Power Details | Negative
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<td><strong>Section 227</strong></td>
<td>Power of Scottish Ministers to vary any references to a period of time, an amount of money, or a fraction.</td>
<td>1985 Act, section 72A; 1993 Act, schedule 1 paragraph 28 - Variation of references to time, money etc</td>
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<td><strong>Section 228(1)</strong></td>
<td>Power of Scottish Ministers to prescribe the form of statement of assets and liabilities, which should include a list of the debtor’s assets, liabilities, income, expenditure and any other information as may be prescribed.</td>
<td>1985 Act, section 73(1); 1993 Act, schedule 1 paragraph 29(5) - Interpretation: “statement of assets and liabilities”</td>
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<td><strong>Section 230</strong></td>
<td>Power of Scottish Ministers to amend the meaning of “associate” to allow for further categories of persons who are to be associates of other persons, and also to provide for the application of certain provisions relating to the meaning of “associate”.</td>
<td>1985 Act, section 74(7) - Regulations relating to the meaning of “associate”</td>
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<td><strong>Schedule 1 paragraph 1(4)</strong></td>
<td>Modification of power of Scottish Ministers in section 116(2) of the Bill to prescribe the form of account which a debtor must provide containing debtor’s current state of affairs.</td>
<td>1985 Act, schedule A1 paragraph 1(4); 2014 Act, schedule 1 - (“minimal asset procedure” (MAP) debtors with few assets)</td>
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<td><strong>Schedule 1 paragraph 2(5)(a)</strong></td>
<td>Power of Scottish Ministers to vary the total value of assets a debtor may not exceed to be eligible for</td>
<td>1985 Act, schedule A1 paragraph 2(5)(a); 2014 Act, schedule 1 - (“minimal asset procedure” (MAP)</td>
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debtors with few assets) | MAP.
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**Schedule 1 paragraph 2(7)**  
1985 Act, schedule A1 paragraph 2(7); 2014 Act, schedule 1 - (“minimal asset procedure” (MAP) debtors with few assets)  
Power of Scottish Ministers to modify circumstances which the AiB must consider when deciding whether the MAP procedure should no longer apply to a debtor.  
Affirmative

**Schedule 1 paragraph 5(4)**  
1985 Act, schedule A1 paragraph 5(4); 2014 Act, schedule 1 - (“minimal asset procedure” (MAP) debtors with few assets)  
Power of Scottish Ministers to prescribe the form of account which a debtor must provide of their current state of affairs where they cease to be covered by a MAP sequestration.  
Negative

**Schedule 3 paragraphs 2(1) and 3**  
1985 Act, schedule 3 part 1 paragraphs 5(1) and 6 - List of preferred debts: remuneration of employees etc  
Power of the Secretary of State to prescribe amounts owed by the debtor to employees by way of remuneration, or to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, with debts not exceeding those amounts being categorised as preferred.  
Negative ^11

**Schedule 4 paragraph 3**  
1985 Act, schedule 5 paragraph 2 - Voluntary trust deeds for creditors: Registration of notice of inhibition  
Power of the Court of Session to prescribe the form of notice which a trustee may record in the register of inhibitions.  
Negative

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^11 To be consolidated in article 5 of the proposed Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 under section 104 of the Scotland Act 1998.
Schedule 6, paragraph 7 1985 Act, schedule 6, paragraph 6 - Meetings of creditors and commissioners - Meetings of creditors other than the statutory meeting: Calling of meeting

Power of Scottish Ministers to prescribe a level of claim, which if a claim is less than, will result in the creditor being exempt from notification of creditor meetings; unless notification has otherwise been requested in writing.

Schedule 8, paragraph 23, inserted section 23A(9) 1985 Act, section 37(8F); 2007 Act, schedule 5, section 13(3)(f) - Effect of sequestration on land attachment

Power of Scottish Ministers to prescribe periods for registering a deed implementing a contract to sell attached land, and for a creditor registering an extract decree of foreclosure to complete title to land.
This document relates to the Bankruptcy (Scotland) Bill (SP Bill 83) as introduced in the Scottish Parliament on 30 October 2015