Contents

Introduction 1
Overview of the Bill 2
Delegated Powers Provisions 3
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.

www.scottish.parliament.uk/delegated-powers
DPLR.Committee@scottish.parliament.uk
0131 348 5175

Follow the Scottish Parliament @ScotParl
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Richard Baker
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 1 December 2015 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Bankruptcy (Scotland) Bill at Stage 1 (“the Bill”).

2. As lead committee for the Bill the Delegated Powers and Law Reform Committee will consider and report on the question whether the Bill should proceed as a Consolidation Bill. In addition to carrying out the role of lead committee, under rule 9.6.2 of Standing Orders the Committee is required to consider and report upon any provisions in the Bill which confer power to make subordinate legislation. The Committee may also consider and report on any provision in such a Bill conferring other delegated powers.

3. This report relates solely to the Committee’s consideration of the delegated powers provisions in the Bill. The Committee, in its role as lead committee for the Bill, is currently considering issues relating to the consolidation exercise, including delegated powers; these reflections are not included within this report.

4. The Bill was introduced by the Lord Advocate on 30 October 2015. The Scottish Government has provided the Parliament with a memorandum on delegated powers provisions in the Bill (“the DPM”).
Overview of the Bill

5. The Bill consolidates the Bankruptcy (Scotland) Act 1985 and the subsequent amending legislation principally the Bankruptcy (Scotland) Act 1993; the Bankruptcy and Diligence etc. (Scotland) Act 2007 and the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”). It also consolidates the substantive provisions of the Protected Trust Deeds (Scotland) Regulations 2013.

6. The Bill arose as a result of a Scottish Law Commission Report on the Consolidation of Bankruptcy Legislation in Scotland, which included consultation on a draft consolidation Bill in 2011\(^3\). A part by part overview of the Bill is provided below.

7. **Parts 1 to 4** of the Bill deal with the mechanics of how the sequestration (bankruptcy) of a debtor’s estate may be brought about, the effect of sequestration on the debtor’s estate, the initial stages of the sequestration and the role and functions of the trustee, the interim trustee and the commissioners.

8. **Parts 5 to 8** of the Bill deal with matters in relation to the vesting of the debtor’s estate in the trustee, contributions by the debtor, safeguarding the estate of the debtor in the interests of creditors and the powers of the trustee in administering the estate.

9. **Parts 9 to 14** of the Bill deal with the public and private examination of the debtor; the entitlement of creditors to make claims on and to receive dividends from the debtor’s estate; the priority of debts in distribution of the debtor’s estate by the trustee; discharge of the debtor and of the trustee; the treatment of assets discovered after discharge of the trustee; bankruptcy restrictions orders and interim bankruptcy restrictions orders; and the protected trust deed regime.

10. **Parts 15 to 18** of the Bill deal with the moratorium on diligence; the appointment and functions of the Accountant in Bankruptcy (“AiB”); and contain various miscellaneous sections which do not fall to be included in the main body of the Bill, and various general sections which apply to the Bill as a whole.

11. The **Schedules** to the Bill deal with the details of the minimal assets process for debtors; the determination of the amount of a creditor’s claim; preferred debts; voluntary trust deeds for creditors; information to be included in the sederunt book; meetings of creditors and commissioners; re-enactment of sections of the Bankruptcy (Scotland) Act 1913; modification of enactments and repeals and revocations.
Delegated Powers Provisions

12. The Committee considered the delegated powers in the Bill on 1 December 2015 under two groupings; existing delegated powers restated unchanged in the Bill, and delegated powers modified as a result of the consolidation. The Committee’s conclusions are outlined below.

Existing delegated powers

13. The Committee considered the approximately 95 specific delegated powers which are restated unchanged in the Bill and which are continued as part of the consolidation. The Committee determined that it did not need to draw the attention of the Parliament to these delegated powers. The Committee considered in particular the six powers in the Bill which do not make purely administrative provision and which have not already been subject to scrutiny by the Scottish Parliament (as they were created prior to the Parliament’s inception). The Committee determined it did not need to draw the attention of Parliament to these six powers:

- Section 6(8) – Power for Scottish Ministers to modify the provisions of the Bill as they relate to the sequestration of a limited partnership
- Sections 103(4) and 106(4) – Power for Secretary of State to provide for the calculation and verification of values and amounts in relation to the recovery of excessive pensions contributions
- Sections 190(3)(c) and 191(1)(d) – Application and affidavit re conversion of protected trust deed into sequestration: Power for Scottish Ministers to provide on whom application and affidavit should be served and other matters the affidavit must contain
- Section 230(1) – Power for Scottish Ministers to change definition of “associate”

Delegated powers modified as a result of consolidation

14. Certain powers in the Bill are modified as a result of the consolidation. The Committee determined it does not need to draw the attention of Parliament to the delegated powers in the following provisions:

- Section 194(1) – Power to modify Part 14 of the Bill (protected trust deeds)
- Section 166(2)(b) – Form of request for excluding secured creditor
- Section 166(2)(c) – Form of agreement for excluding secured creditor
- Section 169 – Form of notice in the register of insolvencies
- 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
• Section 237 – Commencement

15. The Committee reports that it is content with the delegated powers provisions contained in the Bill.
Bankruptcy (Scotland) Bill [as introduced] is available from the following website: http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20(Scotland)%20Bill/SPBill83S042015.pdf [accessed December 2015]

2 Bankruptcy (Scotland) Bill Delegated Powers Memorandum is available from the following website http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20(Scotland)%20Bill/SPBill83DPMS042015.pdf [accessed December 2015]
