PE2192/A: Prevent domestic abusers from using bankruptcy to escape debt

Scottish Government written submission, 17 November 2025

Does the Scottish Government consider the specific ask[s] of the petition to be practical or achievable? If not, please explain why.

The Scottish Government does not believe the specific ask of the petition to be necessary.

The Scottish Government firmly believes that the fraudulent use of bankruptcy to further abuse a partner is financial abuse and there are current safeguards in place to prevent this. This includes the powers given to Trustees to investigate and recover assets not disclosed by the debtor or recover funds given unfairly to certain creditors. The debtor will not be discharged from any debt which they incurred fraudulently. There are no current plans to make changes to the area of bankruptcy legislation under the specific ask of this petition.

Personal insolvency is devolved, and in Scotland is governed primarily by the Bankruptcy (Scotland) Act 2016 (the “2016 Act”). The law of bankruptcy is kept under review by the Scottish Government, and the process is in no way intended to discriminate against victims of abuse.

The policy aim of bankruptcy legislation is to balance the rights and interests of those who are owed money and those who are unable to pay their debts in full. Bankruptcy is intended to ensure that those who can do so make a fair contribution to repayment of their debts and provides a fresh start for them at the end of the process.

When someone is made bankrupt, a trustee, who is either a qualified insolvency practitioner or the Accountant in Bankruptcy (AiB), is appointed to administer the bankruptcy. The trustee is bound by the legislation, and it is their statutory duty to realise assets, including property, and ingather funds collected through contributions where appropriate. Legislation sets out that the estate collected will first meet the trustee’s costs of administration prior to any dividend payable to the creditors involved.

During the administration of the case, a trustee will assess whether the individual can pay a contribution from their earnings. This assessment is achieved using the statutory Common Financial Tool (CFT) which sets a level of acceptable expenditure based upon the individual’s circumstances. When using the CFT the trustee will obtain evidence to confirm the individual’s income to ensure a true assessment is made.

The trustee is obligated to fully investigate and realise all assets for the benefit of creditors, including any that were initially undisclosed. They may interview the debtor and seek supporting evidence, but their powers are limited under the 2016 Act. They cannot carry out covert investigations, examine income or bank accounts not held in the debtor’s name, or act beyond the statutory investigation period. If no evidence of undisclosed assets is found, they cannot take the matter further.

A debtor has a legal duty to cooperate fully with the trustee and to disclose all assets owned or acquired during the bankruptcy process. It is a criminal offence to conceal assets. Discharge from bankruptcy is conditional on cooperation with the trustee.

The debtor's financial circumstances are reviewed on a six-monthly basis. Their income and expenditure will be assessed using evidence such as bank statements and enquiries will be made into any newly acquired assets. Any asset acquired by the debtor up to four years from the date of sequestration will be ingathered by the trustee and realised where possible.

Once bankruptcy is awarded, all qualifying debts owed up to the date of sequestration must be included in the debtor's estate. Creditors cannot pursue the debtor directly for repayment and will rank alongside other creditors for any dividends that may be distributed from the estate.

When the debtor is discharged from bankruptcy, they are discharged from liability for most debts which were due when they entered bankruptcy. There are exemptions for specified types of debt set out in section 145 of the 2016 Act. These include liability for debts from fraud or breach of trust. It is for the courts to determine whether a debt falls into this category. However, this does not include an award under section 28 of the Family Law (Scotland) Act 2006.

What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the ask[s] of this petition?

The Scottish Ministers consulted generally in 2012 on extending the categories of debt which are excluded from bankruptcy and for specific types of debt, more recently child maintenance arrears in 2019. The overall view from stakeholders was to oppose excluding these debts.

In September 2019, the Scottish Ministers committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions with the aim of further enhancing and improving our system. This was in response to a recommendation put forward by the then Economy, Energy and Fair Work Committee following their scrutiny of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2019.

Stakeholders agreed that the review should consist of three stages. Stage one and two have been completed with the introduction of various pieces of legislation including the Bankruptcy and Diligence (Scotland) Act 2024.

We are currently in stage three of the review which is a longer-term strategic review of the statutory debt solutions to assess if they meet the needs of a modern economy. This is an independent review and is being led by Yvonne MacDermid OBE. Two consultations have been published this year, and we await the final report of recommendations to Scottish Ministers by the end of this year. These recommendations will be fully considered by the Scottish Ministers as to how they can be implemented.

Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?

The Scottish Government have implemented a number of policies to help support victims and survivors of domestic abuse.

<u>Equally Safe is Scotland's strategy for preventing and eradicating violence against women and girls.</u>

- Equally Safe sets out a vision to prevent violence from occurring in the first place, build the capability and capacity of support services, and strengthen the justice response to victims and perpetrators.

- Under the auspices of Equally Safe, we have strengthened the law in relation to violence against women and girls and we have taken forward a great deal of work to ensure those working in the public sector are equipped with the resource and knowledge to confidently and sensitively work with those affected by violence against women and girls.

- Our £21.6m annual Delivering Equally Safe Fund support the work of the strategy, providing financial means to prevention, education, policy and support organisations.

<u>Fund to Leave</u>

As part of the measures in the Housing Emergency Action Plan, on 2 September 2025, the Cabinet Secretary for Housing announced a £1m national fund to leave, building on the success of the pilot fund, which provided financial support to women to pay for essentials they need when leaving a relationship with an abusive partner. This was further bolstered by an additional £500k announced on 27 October 2025. Investing this £1.5 million in a new national fund to leave could help up to 1,800 women across the whole of Scotland, improving their housing outcome and assisting with the transition to a more stable and independent future.

Accountant in Bankruptcy