

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

Petitioner written submission, 18 November 2025

1. Purpose of this submission

This written evidence provides new information that directly addresses the action sought by petition PE2192. It sets out why the existing bankruptcy framework in Scotland contains a systemic loophole that enables perpetrators of coercive control, economic abuse and financial misconduct to use sequestration to avoid or neutralise court-established financial liabilities arising from their behaviour. This submission does not relate to any individual case. It identifies structural deficiencies, inconsistencies in statutory interpretation, and operational practices that increase the risk of abuse of the personal insolvency system.

2. Conflict of interest in the Scottish Government submission

The official Government response (PE2192/A) was written by the Accountant in Bankruptcy (AiB), the executive agency whose own policies, powers and interpretations are central to the concerns raised in this petition. The agency whose conduct is under scrutiny should not be the sole author of the Government's position. This represents a structural conflict of interest which has resulted in omission of material facts, an overly narrow description of applicable law, inaccurate statements presented as authoritative, and failure to acknowledge system-wide vulnerabilities. Independent legal analysis is required.

3. Incorrect description of the law on excluded debts

The Government submission states that "debts incurred fraudulently" are not discharged. This is legally incorrect. Section 145(2) of the Bankruptcy (Scotland) Act 2016 provides an exhaustive list of excluded debts. There is no general exclusion for liabilities arising from fraudulent misrepresentation, economic abuse within relationships, deceptive conduct in civil proceedings, deliberate financial exploitation, or coercive control. Unless a liability falls within a narrow statutory category, or a court orders otherwise, it is discharged. Reform is therefore necessary.

4. Mischaracterisation of the liabilities affected

The Government response focuses on section 28 of the Family Law (Scotland) Act 2006. This is not what the petition concerns. The liabilities placed at risk include any court-established financial obligation, such as compensation arising from unjustified enrichment, financial redress for economic harm, awards arising from financial misconduct, civil judgments involving misleading statements, arbitration awards, and liabilities recognising coercive or controlling financial behaviour. By narrowing its analysis, the Government response fails to address the issue.

5. Trustees lack the powers needed to identify concealed income

Contrary to the Government's assertion, trustees do not have adequate investigatory powers. In practice, trustees cannot obtain financial records belonging to partners or associates, access bank accounts connected with dormant companies, verify income

paid into third-party accounts, compel HMRC intelligence, investigate economic abuse, detect income diversion through informal or digital channels, or challenge false statements without evidence they cannot lawfully obtain. Trustees are structurally unable to detect or prevent economic abuse.

6. The Common Financial Tool (CFT) is vulnerable to abuse

The CFT, which is mandatory in assessing a debtor's income, relies predominantly on self-reported information. Trustees must apply it even where financial information is inconsistent with statements made in other legal forums, civil courts have found misrepresentation, income is routed through third parties, or financial arrangements indicate concealed earnings. There is no statutory mechanism enabling trustees to verify withheld income. This creates a clear pathway for perpetrators to manipulate declared income and secure discharge.

7. Sequestration can remove a victim's ability to seek justice

When sequestration discharges a court-established financial liability, a victim of economic abuse may lose the resources required to challenge trustee decisions, classification of liabilities, or the debtor's discharge. This creates a closed loop: a financial liability is established, sequestration is used to discharge it, the creditor loses the means to challenge the error, and the debtor receives discharge without scrutiny. This is inconsistent with Article 6 of the European Convention of Human Rights (ECHR), Article 1 of the First Protocol (A1P1) of ECHR, obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the principles underlying the 2016 Act.

8. Omission of human-rights obligations

The Government response contains no reference to relevant human-rights duties. Court-established financial liabilities constitute "possessions" under A1P1 ECHR, and discharging them through a vulnerable process constitutes interference. Economic abuse is recognised as a form of gender-based violence. The insolvency system must align with obligations under the Equality Act 2010, CEDAW and the Human Rights Act 1998. These omissions are significant.

9. The petition is narrow, proportionate, and realistic

The petition seeks a targeted safeguard: that court-established financial liabilities linked to coercive control, economic abuse, deliberate financial misrepresentation, or financial misconduct should not be automatically discharged without judicial scrutiny. This is proportionate, consistent with ECHR principles, aligned with domestic abuse policy, limited in scope, and achievable without undermining legitimate debt relief.

10. Conclusion

The Scottish Government submission does not address the systemic weaknesses highlighted by this petition. It contains legal inaccuracies, omits key human-rights considerations, and was prepared by the agency whose approach is under scrutiny. The Committee is invited to recognise that the current system permits misuse of sequestration to avoid liabilities arising from economic abuse, and that legislative reform is required.