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4 September 2023

Dear Convener,

### **Bankruptcy and Diligence (Scotland) Bill**

Further to my letter of 12 June and as the Committee prepares for its Stage 1 evidence sessions on the Bill, I am keen that we do all we can to facilitate its crucial scrutiny function. In that regard, I understand that the Committee would find it helpful for the Bill to be set in context of the wider work that is being taken forward to improve the approach to bankruptcy and diligence procedures in Scotland.

We have taken the deliberate decision to address in the Bill those issues which can only be addressed through primary legislation. There are good reasons for this beyond the critically important driver of making the best use of the Parliament's time – not least that the pace of change in the broader economy continues to increase, and our speed of response is greatly enhanced by the more rapid process open to make changes in secondary legislation. It is also the case that, important though these changes are both individually and collectively, they are more an evolution of the existing system than a fundamental reform.

Our forward work programme draws on detailed work of a range of individuals and groups, including:

- reports from Scottish Parliamentary Committees, notably:
  - a) [Protected Trust Deeds](#), the May 2020 report of the Economy, Energy and Fair Work Committee
  - b) [Robbing Peter to pay Paul: Low income and the debt trap](#), the January 2022 report of the Social Justice and Social Security Committee
- reports from our 3-stage wider review of debt solutions. Most recently, the second stage of this wider review was progressed by stakeholder-led working groups, focusing respectively on the topics of (i) Moratorium and Common Financial Tool, (ii)

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Protected Trust Deeds (PTDs) and (iii) Bankruptcy and cross-cutting issues, with their reports being published in March 2022. Thereafter:

- c) the Scottish Government set out for consultation in August 2022, proposals in response to working groups' recommendations, and also in response to a separate review of diligence, in the document [Scotland's statutory debt solutions and diligence: policy review response](#)
- d) the Scottish Government published in January 2023 information about how consultees had reacted to the proposals, in the document [Scotland's statutory debt solutions and diligence: summary of responses](#).

The annex to the letter summarises the improvement agenda that has emerged from such work and provides an update on how the various components are being taken forward. We are continuing to refine our plans and to work through the detail of the measures which we propose to take forward in secondary legislation, not least to take account of feedback received from our stakeholders, specifically through a series of five engagement events held across Scotland and also the most recent meeting of my own working group on statutory debt solutions, all of which took place in June. We are also looking closely at the responses to your call for evidence on the draft Bill, which gave people an opportunity to set out their wider priorities for change.

In addition to this summary of our bankruptcy and diligence improvement agenda and the steps being taken to implement it, it may be that the Committee would find it helpful to have information about both the operation of the current moratorium provision in Scotland and the operation of the mental health 'Breathing Space' approach in England and Wales. If you could let me know if that would be the case, I will ask officials to provide information in the coming weeks.

Separately, I will be writing to the Committee very shortly to set out details of the third and final stage of our review of personal insolvency, and to send the Committee the report of the Expert Working Group looking at the development of the mental health moratorium. I look forward to discussing all of this with you when we meet.

Yours sincerely



**TOM ARTHUR MSP**

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## STATUTORY DEBT SOLUTIONS AND DILIGENCE: REFORM OVERVIEW

### Scottish Government approach to taking forward recommendations consulted on in “Scotland’s statutory debt solutions and diligence: policy review”

#### Take forward through primary legislation

- Proposal 1.1 – bring forward proposals for a mental health moratorium
- Proposal 5.3 – exceptional attachment: extend redemption period from 7 days to 14 days where assets are not removed from the premises
- Proposal 5.6 – diligence on the dependence – ensure the Debt Advice and Information Pack (DAIP) is issued when an application is submitted
- Proposal 5.7 – money attachment: remove restrictions on when it can be executed
- Proposal 5.8 – introduce 21 day period for employers to confirm success of earnings arrestment
- Proposal 5.9 – introduce requirement for banks to report where a bank arrestment is unsuccessful within 21 days

#### Take forward through secondary legislation

- Proposal 1.2 – requirement to provide an individual with a clear and succinct information leaflet for those considering a trust deed
- Proposal 2.1 – remove the minimum debt threshold for Minimal Asset Process (MAP) bankruptcy (DONE)
- Proposal 2.2 – remove MAP single asset threshold and uprate other asset thresholds
- Proposal 3.2 – Common Financial Tool (CFT): move from the Common Financial Statement to the Standard Financial Statement
- Proposal 3.3 – exclude one off support payments by government e.g. from the CFT when determining surplus income levels
- Proposal 3.5 – exclude mobility scooters from assets in bankruptcy and vesting with the trustee
- Proposal 3.7 – uprate vehicle thresholds
- Proposal 3.8 – put the PTD Protocol into legislation
- Proposal 4.8 – change the statutory rate of interest to the Bank of England base rate plus 2% - fixed at the date of award
- Proposal 5.1 – introduce Information Disclosure Orders initially for non-government bodies
- Proposal 5.3 – exceptional attachment: increase value of excluded sentimental items to £500
- Proposal 5.4 – inhibition forms to include “process server”
- Proposal 5.10 – extend the summary warrant process to Inhibitions, ensuring existing recall provisions for inhibition apply to summary warrants, and ensure the DAIP is issued earlier in the process.

#### Take forward through discussions with the Scottish Civil Justice Council

- Proposal 5.11 – Arrestment of ships: remove prohibition on Sunday service

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### Take forward administratively

- Proposal 1.3 – streamline the DAIP
- Proposal 1.4 – simplify language/terminology on the website and in publications
- Proposal 3.6 – review guidance on vehicles in bankruptcy / commission work to feed into the Stage 3 review on how best to treat vehicles in future
- Proposal 3.9 – expert working group looking at reducing administrative burden
- Proposal 4.6 – consideration of AIB to be trustee of last resort in cases of continued debtor non-co-operation
- Proposal 5.2 – treatment of family home to be included in Stage 3 review

### Yet to decide whether/how to take forward

- Proposal 4.1 – investigate composition process for PTDs
- Proposal 4.2 – explore limited early discharge for PTDs in specific circumstances
- Proposal 4.3 – removal of current time limits on refusal of discharge in specific circumstances
- Proposal 4.4 – investigate composition process for bankruptcy
- Proposal 4.8 – consider not reimposing interest and charges when a client in the Debt Arrangement Scheme (DAS) dies
- Proposal 5.13 – collection of additional diligence statistics to inform future changes

### Not to progress at this stage

- Proposal 5.8 – explore the possibility of transferring the court role in collection and distribution of conjoined arrestments to AiB
- Proposal 5.9 – investigate need for and impact of introducing ability to vary earnings arrestments. Explore scope to move functions from the courts to AiB

### Recommendations for no change

- Proposal 2.3 – leave the PTD minimum debt threshold at £5,000
- Proposal 3.1 – keep the CFT for assessing contributions
- Proposal 3.3 – retain the full surplus income approach
- Proposal 3.4 – retain the current repayment periods in debt solutions
- Proposal 3.10 – retain the existing arrangements when someone in a PTD dies
- Proposal 4.5 – retain the current trustee report and discharge process in bankruptcy
- Proposal 4.7 – no change to the DAS composition process
- Proposal 5.4 – the length of an inhibition to remain 5 years
- Proposal 5.5 – maintain the current arrangements for interim attachment
- Proposal 5.12 – residual attachment: take forward once a suitable alternative to adjudication of debt and land attachment is identified

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