**Sewel Memorandum**

**Financial Services & Markets Bill**

This Bill would replace the existing regulatory arrangements contained in the Financial Services Act 1986, the Banking Act 1987, the Insurance Companies Act 1982, the Building Societies Act 1986 and the Friendly Societies Act 1992 with a single regulatory framework for the UK financial services industry and a single statutory regulator, the Financial Services Authority (FSA). The Bill was the subject of consultation in July 1998 and a progress report was published in March 1999 by HM Treasury. The proposals were generally well received.

**Provision for which Scottish Parliament consent is required**

Two aspects of the Bill have direct Scottish implications. Part of the Bill sets out the role of the FSA in insolvency proceedings. The majority of the proposals are related to giving the FSA powers in relation to the winding up of financial institutions and insurance companies. As such, they are related entirely to reserved law. However, there is one issue in relation to Scotland - bankruptcy of sole traders - that relates to devolved law.

At present the FSA is able to petition for the winding up of companies (including partnerships) which are authorised to carry out financial services business. However, it does not have an equivalent power to petition for the bankruptcy of a sole trader carrying out a financial services business. In such cases it is difficult or impossible to distinguish between an individual's personal and business affairs. Consequently, it is proposed that the FSA should be given a power to petition for bankruptcy of an individual.

This area of law is contained in the Bankruptcy (Scotland) Act 1985 (the 1985 Act). The proposals would introduce new grounds for petitioning for the sequestration of a person's estate, which would be available to the FSA - who would not normally be a creditor of that estate. Under the 1985 Act, only the debtor (either with the consent of creditors, or following demands for payment by creditors), a trustee under a trust deed (under exceptional circumstances), or a "qualified creditor or qualified creditors" to whom at least £1500 is owed (individually or collectively) may petition for the sequestration of the debtor's estate. The major ground for petitioning is that the petitioner can show that the debtor is unwilling or unable to pay an established debt. Bankruptcy law in Scotland is essentially a creditor-driven process.

Therefore, the Bill would create new special rules of Scots private law in relation to personal bankruptcy that would become part of the law on reserved matters. As such, the new rules would be outwith the legislative competence of the Scottish Parliament. So, the Scottish Parliament could neither amend nor repeal the provisions. However, it should be noted that, while bankruptcy law would be within the legislative competence of the Scottish Parliament, the purpose of the Bill relates to the supervision and regulation of financial services, which is a reserved matter.

The Bill would also remove the need for the self-regulating legal professions in Scotland to make provision for regulating the provision of financial services by their members. Self-regulation of the legal professions is a devolved matter.