

Bankruptcy and Diligence (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 27-EN), a Financial Memorandum (SP Bill 27-FM), a Policy
Memorandum (SP Bill 27-PM), a Delegated Powers Memorandum (SP Bill 27-DPM) and
statements on legislative competence (SP Bill 27-LC).**

Bankruptcy and Diligence (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision to establish a mental health moratorium; to modify the Bankruptcy (Scotland) Act 2016; and to modify the law of diligence.

Mental health moratorium

1 Moratorium on debt recovery action: debtors who have a mental illness

- 5 (1) The Scottish Ministers may by regulations make provision establishing a moratorium on debt recovery action by creditors against individuals who have a mental illness.
- (2) Regulations under subsection (1) may (among other things) include provision about—
- 10 (a) the eligibility criteria, or conditions, which must be met for the moratorium to apply in relation to an individual,
- (b) the types of debts in respect of which the moratorium applies,
- (c) the process for determining if the eligibility criteria, or conditions, are met (for example, by conferring functions on a person or persons of a description specified in the regulations),
- 15 (d) the time period for which the moratorium is to apply in relation to an individual (“the moratorium period”),
- (e) the actions creditors must, may or may not take during the moratorium period in relation to an individual who is the subject of the moratorium and the consequences (if any) for creditors for taking or failing to take such actions,
- (f) the obligations on an individual who is the subject of the moratorium during the
- 20 moratorium period,
- (g) the arrangements for the recording of, and access to, information that the moratorium is applying in relation to an individual,
- (h) appeals against decisions made under the regulations.
- (3) Regulations under this section may—
- 25 (a) make different provision for different purposes,
- (b) modify any enactment,
- (c) include incidental, supplementary, consequential, transitional, transitory or saving provision.

- (4) Regulations under this section are subject to the affirmative procedure.

Modification of the Bankruptcy (Scotland) Act 2016

2 Process for applying for recall of an award of sequestration

- (1) Part 2 of the Bankruptcy (Scotland) Act 2016 is modified as follows.

- (2) In section 29 (petitions for recall of sequestration), in subsection (4)—

- (a) in paragraph (a), after “debtor” insert “(where the debtor is not the petitioner)”,
 (b) in paragraph (b), after “any” insert “other”,
 (c) in paragraph (c), after “trustee” insert “(where the trustee is not the petitioner)”,
 (d) in paragraph (d), after “AiB” insert “(where AiB is not the petitioner)”.

- (3) In section 31 (application to Accountant in Bankruptcy for recall of sequestration)—

- (a) in subsection (3), in the opening words, before “persons” insert “other”,
 (b) in subsection (4)—
 (i) in paragraph (a), the words “(where the debtor is not the applicant)” are repealed,
 (ii) in paragraph (c), after “trustee” insert “(where AiB is not the trustee)”,
 (c) in subsection (5)—
 (i) after “granted” insert “—
 (a) where AiB is not the trustee.”,
 (ii) at the end insert—
 “(b) where AiB is the trustee, under section 35(6) (subject to any conditions imposed under section 35(6B)).”.

- (4) In section 32 (application under section 31: further procedure)—

- (a) for subsection (1) substitute—
 “(1) This section applies where—
 (a) an application is made under section 31, and
 (b) AiB is not the trustee.”,
 (b) the heading of the section becomes “**Application under section 31: further procedure where Accountant in Bankruptcy is not trustee**”.

- (5) In section 33 (determination where amount of outlays and remuneration not agreed), in subsection (1)—

- (a) the word “and” immediately following paragraph (a) is repealed,
 (b) after paragraph (a), insert—
 “(aa) AiB is not the trustee, and”.

- (6) In section 34 (recall of sequestration by Accountant in Bankruptcy)—

- (a) before subsection (1), insert—
 “(A1) This section applies where AiB is not the trustee.”,
 (b) after subsection (1), insert—

“(1A) Before recalling an award of sequestration AiB must take into account any representations made by an interested person within 21 days beginning with the day on which notice is given under section 31(3)(b).”.

(c) in subsection (2)(a), for “8 weeks” substitute “9 weeks”,

(d) the title to the section becomes “**Recall of sequestration where Accountant in Bankruptcy is not trustee**”.

(7) In section 35 (recall where Accountant in Bankruptcy trustee)—

(a) in subsection (1)(b)—

(i) before “considers” insert “either—

(i) receives an application under section 31, or

(ii)”.

(ii) for “should” substitute “may”,

(b) in subsection (2), after “must” insert “—

(a) where an application under section 31 is received, notify every creditor known to AiB that the application has been made within 7 days beginning with the day on which the application is received,

(b) where AiB is acting on its own accord.”.

(c) after subsection (2), insert—

“(2A) At the same time as giving notice under subsection (2)(b), AiB must give to the persons mentioned in subsection (2B) a notice informing the recipient that the person has a right to make representations to AiB in relation to the notification within 21 days beginning with the day on which the notice is given.

(2B) The persons are—

(a) the debtor, and

(b) any person who was a petitioner for, or concurred in a debtor application for, the sequestration.”.

(d) in subsection (5)(a), for “subsection (2)” substitute “subsection (2A) or, as the case may be, section 31(3)(b)”.

(e) after subsection (6), insert—

“(6A) AiB may not recall an award of sequestration after—

(a) where no appeal is made under section 37(5)(a), the day which is 9 weeks after the days mentioned in subsection (5)(a) have expired, or

(b) where such an appeal is made, such later day which is 14 days after the day on which the appeal is finally determined or abandoned.

(6B) If AiB does not under subsection (6) recall an award of sequestration, the sequestration must continue but is to be subject to such conditions as AiB thinks fit.

(6C) Despite notice being given under subsection (2)(b), the proceedings in the sequestration are to continue as if the notification had not been made until a recall of an award of sequestration is granted under subsection (6) (subject to any conditions imposed under subsection (6B)).”.

- (f) the heading of the section becomes “**Recall of sequestration where Accountant in Bankruptcy is trustee**”.

3 When sequestration is awarded: minimal asset process

- (1) Section 22 (when sequestration is awarded) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In subsection (1)(b), for “2(8)” substitute “2(2) or (8)”.

4 Gratuitous alienations: right acquired in good faith and for value

- (1) Section 98 (gratuitous alienations) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In subsection (7), for “(6)” substitute “(5)”.

5 Time periods for appeals against decisions by AiB

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 69 (resignation or death of trustee)—
- (a) in subsection (9), for “subsection (11)” substitute “subsections (11) and (12)”,
- (b) for subsection (12) substitute—
- “(12) T or T's representatives, NT, the debtor or any creditor may, within 14 days beginning with the date of any decision of AiB in an appeal under subsection (11)(a), appeal to the sheriff against that decision.”.
- (3) In section 134 (appeal against determination as to outlays and remuneration payable to trustee)—
- (a) for subsection (3) substitute—
- “(3) The trustee, the debtor or any creditor may, within 14 days beginning with the date of any decision of AiB in an appeal under subsection (1)(a), appeal to the sheriff against that decision.”,
- (b) in subsection (4), after “(1)” insert “or (3)”,
- (c) after subsection (5), insert—
- “(6) The decision of the sheriff on an appeal under subsection (1)(b) or (3) is final.”.

Arrestee's duty of disclosure

6 Arrestment and action of furthcoming

- (1) Part 3A of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In section 73G(4) (arrestee's duty of disclosure)—
- (a) in paragraph (a), the word “and” after sub-paragraph (ii) is repealed,
- (b) after paragraph (b), insert—
- “(c) where no property is attached, the reason why (for example, the arrestee does not hold funds standing to the credit of the debtor, or does hold

such funds but the sum held is less than sum mentioned in section 73F(3)(a)).”.

(3) In section 73H (failure to disclose information)—

(a) in subsection (1)(b), for “mentioned in section 73F(4) of this Act” substitute “of £500”,

(b) after subsection (4), insert—

“(5) The Scottish Ministers may by regulations modify subsection (1)(b) so as to vary the sum mentioned there.”.

7 Diligence against earnings

(1) Part 3 of the Debtors (Scotland) Act 1987 is modified as follows.

(2) In section 70A (employer’s duty to provide information)—

(a) in subsection (1)—

(i) for “Where an employer” substitute “This section applies where a person”,

(ii) the words from “the employer shall” to the end of the subsection are repealed,

(b) for subsection (2) substitute—

“(1A) If—

(a) the debtor is not employed by the person who received the schedule or order, or

(b) the debtor is employed by that person but, because of the net earnings of the debtor, the sum to be deducted on any pay-day under this Part of this Act is, or is expected to be, nil,

the person must, within 21 days of the order or schedule being served, send to the relevant person the information mentioned in paragraph (a) or (b) (as appropriate) in (or as nearly as may be in) such form as may be prescribed.

(2) Otherwise, the employer must send to the relevant person the information mentioned in subsection (3) at each of the following times—

(a) as soon as is reasonably practicable following the order or schedule being served, and

(b) subsequently, provided the debt has not been extinguished, on or as soon as is reasonably practicable after the dates mentioned in subsection (4),

in (or as nearly as may be in) such form as may be prescribed.”,

(c) in subsection (3)—

(i) in the opening words, for “(1)” substitute “(2)”,

(ii) in paragraph (b)(i), for “(1)” substitute “(2)(a)”,

(iii) in paragraph (b)(ii), for “(2)” substitute “(2)(b)”,

(d) in subsection (4), for “(2)” substitute “(2)(b)”,

(e) in subsection (5)—

(i) in the opening words, for “subsections (1) and (2)” substitute “subsection (2)”,

(ii) in the opening words, for the words from “give notice” to “the sheriff clerk” substitute “send to the relevant person notice—”,

(iii) after paragraph (b), insert—

“in (or as nearly as may be in) such form as may be prescribed.”,

(f) after subsection (5), insert—

“(5A) But subsection (5) does not apply where a notice has been given to the relevant person under subsection (1A)(b).”,

(g) in subsection (6), for “subsection (1) or (2)” substitute “subsection (2)”,

(h) after subsection (6), insert—

“(7) In this section—

(a) “relevant person” means—

(i) the creditor, or

(ii) in the case of a conjoined arrestment order, the sheriff clerk,

(b) “prescribed” means prescribed by regulations made by the Scottish Ministers.”.

(i) the heading of the section becomes “**Employers etc.: duty to provide information**”.

(3) In section 70B (failure to give notice under section 70A(5))—

(a) before subsection (1), insert—

“(A1) Where a person fails without reasonable excuse to send the information required under section 70A(1A) or (2) of this Act, the sheriff may, on the application of any creditor, make an order requiring the person who received the schedule or order—

(a) to send the information to the creditor, and

(b) to pay to the creditor—

(i) the sum due to the creditor by the debtor, or

(ii) the sum of £500,

whichever is the lesser.”,

(b) in subsection (1)(b), for the words from “an amount” to the end of that paragraph substitute “—

(i) the sum due to the creditor by the debtor, or

(ii) the sum of £500,

whichever is the lesser.”,

(c) in subsection (2), in the opening words, for “subsection (1)(b)” substitute “subsection (A1)(b) or (1)(b)”,

(d) in subsection (3)—

(i) for “An employer” substitute “A person”,

(ii) for “subsection (1)” substitute “subsection (A1)(b) or (1)(b)”,

(e) after subsection (3), insert—

“(4) The Scottish Ministers may by regulations modify subsection (A1)(b)(ii) or (1)(b)(ii) so as to vary the sums mentioned there.”,

(f) the heading of the section becomes “**Failure to give notice under section 70A**”.

Diligence on the dependence

5 **8 Provision of debt advice and information package**

(1) Part 1A of the Debtors (Scotland) Act 1987 is modified as follows.

(2) In section 15F (hearing on application)—

(a) in subsection (3)—

(i) the word “and” immediately following paragraph (b) is repealed,

(ii) after paragraph (c), insert “; and

(d) where the debtor is an individual, that the creditor has provided the debtor with a debt advice and information package.”,

(b) after subsection (7), insert—

“(8) In this section and in section 15K, “debt advice and information package” means the debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.”.

(3) In section 15K (recall or restriction of diligence on dependence)—

(a) after subsection (5), insert—

“(5A) Where subsection (5B) applies and the court is satisfied that the creditor has not provided the debtor with a debt advice and information package it—

(a) must make an order—

(i) recalling the warrant, and

(ii) if an arrestment or inhibition has been executed in pursuance of the warrant, recalling that arrestment or inhibition, and

(b) may make an order ancillary to any order mentioned in paragraph (a).

(5B) This subsection applies where—

(a) the debtor is an individual, and

(b) the hearing is a hearing fixed under section 15E(4)(a).”.

(b) in subsection (10), after “(5),” insert “(5A),”.

Exceptional attachment

9 **Notice and redemption periods**

(1) Part 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 is modified as follows.

(2) In section 53 (removal of articles attached in dwellinghouse), in subsection (2), at the end insert “(which is to be not less than 7 days from the date on which the notice is given)”.

(3) In section 56 (redemption), in subsection (1), for the words from “, within 7 days” to the end of that subsection substitute “—

- (a) where an article was removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 7 days of the date on which it was attached,
- (b) where an article was not removed immediately by the officer from the dwellinghouse in which it was attached, to redeem that article within 14 days of the date on which it was attached.”.

Money attachment

10 Money attachment when premises are open

(1) Section 176 (when money attachment not competent) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 is modified as follows.

(2) After subsection (2), insert—

“(2A) But—

- (a) despite subsection (1), it is competent to execute a money attachment in any premises in which a trade or business is carried on on any day the premises are open (whether to the public generally or not) for the purposes of the trade or business, and
- (b) despite subsection (2), the execution of a money attachment may be commenced or continued in such premises at any time the premises are open (whether to the public generally or not) for the purposes of the trade or business, without the officer of court obtaining prior authority of the sheriff.”.

Final provisions

11 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—

- (a) make different provision for different purposes,
- (b) modify any enactment (including this Act).

(3) The regulations—

- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
- (b) are subject to the negative procedure if they do not.

12 Commencement

(1) This section and sections 11 and 13 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—

- (a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

13 Short title

The short title of this Act is the Bankruptcy and Diligence (Scotland) Act 2024.

Bankruptcy and Diligence (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision to establish a mental health moratorium; to modify the Bankruptcy (Scotland) Act 2016; and to modify the law of diligence.

Introduced by: Shona Robison
Supported by: Tom Arthur
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Bill type: Government Bill

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