

Bankruptcy and Diligence (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Mental Health Moratorium

18, 19, 16, 17, 20, 21

Local authority debt recovery: pre-action requirements and recovery of rates

22, 23, 29

Debt advice and information package

24, 27, 28, 30

Sequestration: process for petition and recall

7, 1, 8

Untraceable or uncooperative debtors

2, 3, 9, 10

Commissioners: disqualification from office where AiB is trustee

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Arrestment: funds attached

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Arrestment: service and disclosure

13, 4, 14, 5, 6

Arrestment of ships

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Amendments in debating order

Mental Health Moratorium

Paul O'Kane

18 In section 1, page 1, leave out lines 5 to 9 and insert—

- <(1) A moratorium on debt recovery action by creditors against individuals who are receiving mental health crisis treatment is established.
 - (1A) An individual is receiving mental health crisis treatment when the debtor—
 - (a) has been detained in hospital for assessment or treatment of mental illness,
 - (b) has been removed to a place of safety by a police officer for reasons related to mental health,
 - (c) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service.
 - (1B) Any of the following persons may submit an application to the Accountant in Bankruptcy for a mental health crisis moratorium in relation to a debtor—
 - (a) the debtor,
 - (b) the debtor's carer,
 - (c) an approved mental health professional,
 - (d) a social worker.
 - (1C) The application must include the following information—
 - (a) sufficient information to identify the debtor, and
 - (b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.
 - (1D) The time period for which the moratorium applies—
 - (a) starts on the day following the day on which the Accountant in Bankruptcy approves an application under subsection (1B), and
 - (b) ends on the day that is 30 days after the day on which the debtor stops receiving mental health crisis treatment.
 - (1E) The Scottish Ministers may by regulations make further provision about a mental health moratorium which may (among other things) include provision about—>

Paul O'Kane

19 In section 1, page 1, leave out lines 14 and 15

Colin Smyth

16 In section 1, page 1, line 23, at end insert—

- <() Regulations making provision under subsection (2)(e) must make provision about—
 - (a) the sanctions that may apply where a creditor takes, or fails to take, action in contravention of the moratorium,

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- (b) the process by which individuals may complain about a creditor who takes, or fails to take, action in contravention of the moratorium.>

Colin Smyth

17 In section 1, page 1, line 23, at end insert—

- <() Regulations under this section may not make provision permitting information about individuals to whom the moratorium has applied, or is applying, to be publicly accessible.>

Daniel Johnson

20 In section 1, page 1, line 28, at end insert—

- <() Before making regulations under subsection (1), the Scottish Ministers must consult—
 - (a) debt advice agencies,
 - (b) such other persons as they consider appropriate.>

Daniel Johnson

21 After section 1, insert—

<Moratorium on debt recovery action: pre-laying procedure

- (1) Before laying regulations to make provision establishing a moratorium on debt recovery action by creditors against individuals who have a mental illness, the Scottish Ministers must—
 - (a) lay a draft of the regulations before the Scottish Parliament for a period of 120 days, of which no fewer than 60 days must be days which the Scottish Parliament is not dissolved or in recess, and
 - (b) before finalising the regulations, seek the views of a committee of the Scottish Parliament whose remit includes matters relating to the moratorium on debt recovery action for the time being appointed by virtue of the standing orders.
- (2) The Scottish Ministers must, when laying regulations to establish a moratorium on debt recovery action under section 1, lay a statement setting out—
 - (a) details of the views mentioned in subsection (1)(b), and
 - (b) the changes (if any) they have made to the regulations in response to such views and the reasons for those changes.>

Local authority debt recovery: pre-action requirements and recovery of rates

Paul O'Kane

22 After section 1, insert—

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<Debt arrears: creditor pre-action requirements

Debt arrears: creditor pre-action requirements

- (1) The Scottish Ministers must by regulations make provision for pre-action requirements, where—
 - (a) the creditor intends to take debt recovery action,
 - (b) the creditor is a local authority, and
 - (c) the debtor is an individual.
- (2) Regulations under subsection (1) may (among other things) include provision about—
 - (a) the information a creditor must provide to a debtor including the amount of debt owed to a creditor and a debt advice and information package,
 - (b) the reasonable efforts a creditor must take to agree with a debtor a reasonable plan to make payments to a creditor,
 - (c) the reasonable consideration a creditor must give to—
 - (i) the ability of a debtor to make payment of debt to a creditor within a reasonable time,
 - (ii) the extent to which a debtor has complied with the terms of any plan agreed to in accordance with paragraph (b), and
 - (iii) any changes to a debtor's circumstances which are likely to impact on the extent to which a debtor complies with the terms of a plan agreed to in accordance with paragraph (b).
- (3) Regulations under subsection (1) are subject to the affirmative procedure.>

Paul O'Kane

23 After section 1, insert—

<Debt arrears: creditor pre-action requirements

Debt arrears: creditor pre-action requirements

- (1) The Scottish Ministers must by regulations make provision for pre-action requirements, where—
 - (a) the creditor intends to take debt recovery action,
 - (b) the creditor is a local authority, and
 - (c) the debtor is an individual.
- (2) Regulations under subsection (1) may (in particular) make provision about—
 - (a) information to be provided by a creditor to a debtor in relation to the debt,
 - (b) steps to be taken by a creditor to refer the individual to income maximisation services,
 - (c) steps to be taken by a creditor with a view to seeking to agree arrangements with a debtor for future payment of debt and any other outstanding financial obligation,
 - (d) such other matters as the Scottish Ministers consider appropriate.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.>

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Paul O'Kane

29 After section 8, insert—

<Recovery of rates

Recovery of rates

- (1) Section 247 (recovery of rates) of the Local Government (Scotland) Act 1947 is modified as follows.
- (2) After subsection (5), insert—
 - “(5A) It shall not be competent for a summary warrant to include a surcharge as mentioned in subsection (2) where the person is in receipt of—
 - (a) Council Tax Reduction,
 - (b) Scottish Child Payment.”>.

Debt advice and information package

Daniel Johnson

24 Before section 2, insert—

<Debt advice and information package

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 3 (debt and advice information package), after subsection (1), insert—
 - “(1A) The provision of a debt advice and information package to the debtor under subsection (1) must be accompanied by an offer by the qualified creditor to discuss the information contained in the debt advice and information package.
 - (1B) Where a qualified creditor is unable to discuss the debt advice and information package under subsection (1A), the creditor must offer an alternative contact to provide that information and advice.”.
- (3) In section 167 (statements in and advice regarding trust deed), in subsection (3)(b), after “package,” insert—
 - “(ba) the trustee must offer to discuss the information contained in the debt advice and information package with the debtor,”>

Daniel Johnson

27 In section 8, page 7, line 12, after <package> insert <and offered to discuss this information with the debtor or, where unable to discuss this information with the debtor, provided an alternative contact>

Daniel Johnson

28 In section 8, page 7, line 20, after <package> insert <or given the debtor the opportunity to discuss the information contained in the debt advice and information package with either the creditor or an alternative contact provided by the creditor,>

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Daniel Johnson

30 After section 10, insert—

<Review: debt advice and information package

Review: debt advice and information package

- (1) The Scottish Ministers must, within 3 years of Royal Assent, review the impact of the debt advice and information package in providing support to individuals experiencing debt recovery action.
- (2) The review must consider—
 - (a) the experience of debtors using the debt advice and information package, and
 - (b) whether other assistance should be offered alongside the provision of a debt advice and information package, including providing advice—
 - (i) in person,
 - (ii) by telephone,
 - (iii) by online video call,
 - (iv) through instant messaging.
- (3) The Scottish Ministers must prepare and publish a report on the review under subsection (1).
- (4) The report under subsection (3) must set out, in particular, any steps that the Scottish Ministers propose to take as a result of the review. >

Sequestration: process for petition and recall

Tom Arthur

7 After section 2, insert—

<Recall of sequestration: payment of interest

- (1) Part 2 of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 30 (recall of sequestration by sheriff)—
 - (a) in subsection (2), in paragraph (a), after “full” insert “(including the payment of any interest payable on the debtor’s debts and the payment of the outlays and remuneration of the interim trustee and of the trustee)”, and
 - (b) in subsection (4), in paragraph (a), after “full of” insert “—
 - (i) any interest payable on the debtor’s debts (see section 37A), and
 - (ii)”.
- (3) In section 32(4) (application under section 31: further procedure)—
 - (a) in paragraph (b), for “(including” to the end of that paragraph substitute “, including the payment in full of—
 - (i) any interest payable on the debtor’s debts (see section 37A),
 - (ii) the outlays and remuneration of the interim trustee and of the trustee,” and

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- (b) in paragraph (c)(ii), after “payment of” insert “any interest payable on the debtor’s debts and payment of”.
- (4) In section 34(1) (recall of sequestration by Accountant in Bankruptcy), in paragraph (a), for “(including the outlays and remuneration of the interim trustee and the trustee)” substitute “, including the payment in full of—
 - “(i) any interest payable on the debtor’s debts (see section 37A),
 - (ii) the outlays and remuneration of the interim trustee and of the trustee,”.
- (5) In section 35 (recall where Accountant in Bankruptcy trustee)—
 - (a) in subsection (1), in paragraph (b), after “including” insert “the payment of any interest payable on the debtor’s debts and the payment of”, and
 - (b) in subsection (6), in paragraph (a), for “(including” to the end of that paragraph substitute “, including the payment in full of—
 - “(i) any interest payable on the debtor’s debts (see section 37A),
 - (ii) the outlays and remuneration of the interim trustee and of the trustee,”.
- (6) After section 37, insert—

“37A Interest

- (1) This section applies for the purpose of determining the amount of interest payable on the debtor’s debts in relation to a recall of an award of sequestration.
- (2) Interest, between the date of sequestration and the date of payment of the debt, is payable at the rate specified in section 129(10), unless subsection (3) applies.
- (3) This subsection applies if the whole of the debt is paid in full within 6 months after the date of the award of sequestration, in which case interest is not payable on the debt.
- (4) For the avoidance of doubt, if only part of the debt is paid within 6 months after the date of the award of sequestration, interest is payable on the whole of debt (including any part of the debt already paid since the award) in accordance with subsection (2).”.>

Murdo Fraser

- 1 After section 3, insert—

<When sequestration is awarded: number of days to serve petition

- (1) Section 22 (when sequestration is awarded) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In subsection (4)(b), for “14” substitute “21”.>

Tom Arthur

- 8 After section 3, insert—

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<Petition for sequestration: citation of debtor

- (1) Section 22 (when sequestration is awarded) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) For subsection (4) substitute—
 - “(4) The debtor must be cited no fewer than 6 days before the date specified under subsection (3).”>

Untraceable or uncooperative debtors

Murdo Fraser

- 2 After section 5, insert—

<Discharge of trustee

Discharge of trustee

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 142 (debtor not traced: new trustee)—
 - (a) in subsection (2), for “for authority to resign office” substitute “to be discharged as trustee”,
 - (b) in subsection (6)(c)—
 - (i) the word “not” is repealed,
 - (ii) the words “, other than by a claim in the final distribution of the debtor's estate,” is repealed. >

Murdo Fraser

- 3 After section 5, insert—

<Discharge of trustee

Debtor not co-operative: new trustee

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) After section 144, insert—

“144A Debtor not co-operative: new trustee

- (1) This section applies where—
 - (a) the debtor has not co-operated with the trustee,
 - (b) action under section 215 has been exhausted or is not appropriate, and
 - (c) the trustee, as a result, is unable to carry out the trustee's functions in accordance with section 50.
- (2) The trustee may apply to AiB, in the prescribed form, to be discharged as trustee.
- (3) An application under subsection (2) must include details of every creditor known to the trustee.

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- (4) Where an application is made under subsection (2), AiB must issue to the trustee who made the application a notice in the prescribed form granting the application.
- (5) Where a notice is issued under subsection (4)—
 - (a) AiB is deemed to be the trustee,
 - (b) AiB must notify every creditor known to AiB that AiB is deemed to be the trustee,
 - (c) the former trustee is entitled to recover outlays and remuneration payable under sections 132 and 133, and
 - (d) subsections (9) to (13) of section 69 apply in relation to the appointment of AiB as the new trustee as they apply in relation to the appointment of a new trustee under that section.”.>

Tom Arthur

9 After section 5, insert—

<Debtor not traced: former trustee’s outlays and remuneration

- (1) Section 142 (debtor not traced: new trustee) of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In subsection (6)(c), after “133” insert “(there being no effect on any outlays and remuneration paid to the former trustee before the issue of the notice)”.>

Tom Arthur

10 After section 5, insert—

<Failure of debtor to co-operate with trustee in sequestration

- (1) The Bankruptcy (Scotland) Act 2016 is modified by subsections (2) and (3).
- (2) After section 147, insert—

“Failure of debtor to co-operate with trustee

147A Debtor fails to co-operate: Accountant in Bankruptcy appointment as new trustee

- (1) This section applies where—
 - (a) AiB is not the trustee in the sequestration,
 - (b) the period of 5 years beginning with the date of sequestration of a debtor’s estate has expired, and
 - (c) the debtor has not been discharged from that sequestration.
- (2) The trustee in the sequestration may apply to AiB for authority to resign office on account of the debtor’s failure to co-operate.
- (3) An application under subsection (2) must be made in the prescribed form and include information about—
 - (a) the nature and the extent of the debtor’s failure to co-operate with the trustee,
 - (b) the actions taken by the trustee to secure the debtor’s co-operation,

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- (c) any other matters that the trustee considers relevant, and
 - (d) details of every creditor known to the trustee.
- (4) Before making an application under subsection (2), the trustee must—
- (a) notify the debtor by sending an intention to resign notice, and
 - (b) give an intention to resign notice to every creditor known to the trustee.
- (5) An intention to resign notice must—
- (a) be in the prescribed form, and
 - (b) include a statement informing the recipient that the recipient has a right to make representations to AiB in relation to the application within 14 days beginning with the day on which the application is made.
- (6) After receiving an application under subsection (2), AiB must—
- (a) take into account any representations made by an interested person within 14 days beginning with the day on which the application is made, and
 - (b) if satisfied of the matters mentioned in subsection (7), issue to the trustee who made the application a notice in the prescribed form granting the application.
- (7) The matters are—
- (a) that the debtor has failed to co-operate with the trustee to such an extent that the trustee is prevented from carrying out the trustee's functions under this Act,
 - (b) that the failure is likely to continue, and
 - (c) that the trustee has taken all reasonable steps to secure the debtor's co-operation.
- (8) AiB—
- (a) may request such further information from the trustee as AiB considers necessary to make a decision under subsection (6), and
 - (b) must notify the trustee, the debtor and every creditor known to AiB of its decision under subsection (6).
- (9) Where a notice is issued under subsection (6)(b), 14 days after the notice is given—
- (a) AiB is deemed to be the trustee,
 - (b) AiB must notify the debtor and every creditor known to AiB that AiB is deemed to be the trustee,
 - (c) AiB must make an appropriate entry in the register of insolvencies,
 - (d) the former trustee is not entitled to recover, other than by a claim in the final distribution of the debtor's estate, outlays and remuneration payable under sections 132 and 133 (there being no effect on any outlays and remuneration paid to the former trustee before the issue of the notice),
 - (e) subsections (9) to (13) of section 69 apply in relation to the appointment of AiB as the new trustee as they apply in relation to the appointment of a new trustee under that section,

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- (f) section 116 applies as if there were substituted for subsection (2)—
 - “(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”, and
- (g) section 138 applies to the sequestration with the modifications in subsection (10).
- (10) The modifications are—
 - (a) in subsection (2), the words “after the date which is 12 months after the date on which sequestration is awarded” are omitted,
 - (b) in subsection (3), for “must, as soon as practicable after the date which is 12 months after the date on which sequestration is awarded” substitute “may, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act”,
 - (c) in subsection (6), for “must, as soon as practicable after the date which is 12 months after the date of the refusal” substitute “may, at any time after a refusal, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act”.

147B Accountant in Bankruptcy appointment as new trustee: review and appeal

- (1) The trustee may apply to AiB for a review of a decision under section 147A(6) to refuse an application.
- (2) The debtor or any creditor may apply to AiB for a review of a decision under section 147A(6) to grant an application.
- (3) Any application under subsection (1) or (2) must be made within 14 days beginning with the day of notification of the decision in question.
- (4) If an application for review under subsection (2) is made, the grant of the application is suspended until the determination of that review by AiB.
- (5) If an application for a review under subsection (1) or (2) is made, AiB must—
 - (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
 - (b) confirm or revoke the decision within 28 days beginning with the day on which the application is made.
- (6) If, under subsection (5)(b), AiB—
 - (a) revoke a decision to grant an application, AiB must revoke the notice given under section 147A(6)(b) granting the application,
 - (b) revoke a decision to refuse an application, AiB must issue a notice under section 147A(6)(b) granting the application, or
 - (c) confirm a decision to grant an application, section 147A(9) applies as if for the words “14 days after the notice is given” there were substituted “14 days after the AiB decision under section 147B(5)(b)”.
- (7) The debtor, the trustee or any creditor may appeal to the sheriff against any decision of AiB under subsection (5)(b) within 14 days beginning with the day of the decision.

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- (8) If an appeal relating to a decision mentioned in subsection (6)(b) or (c) is made, the grant of the application is suspended until the determination of that appeal.
- (9) If, on an appeal under subsection (7), the sheriff determines that an application which has been refused should be granted—
 - (a) the sheriff must order AiB to issue a notice under section 147A(6)(b) granting the application, and
 - (b) section 147A(9) applies as if the words “14 days after the notice is given” were omitted.
- (10) If, on an appeal under subsection (7), the sheriff determines that an application which has been granted should be refused, the sheriff must order AiB to revoke the notice given under section 147A(6)(b) granting the application.
- (11) The sheriff clerk must send AiB a copy of the sheriff's decree.
- (12) The decision of the sheriff on an appeal under subsection (7) is final.

147C Debtor fails to co-operate with AiB as trustee

- (1) This section applies where—
 - (a) AiB is the trustee but was not appointed as trustee under section 147A,
 - (b) the period of 5 years beginning with the date of sequestration a debtor's estate has expired, and
 - (c) the debtor has not been discharged from that sequestration.
- (2) AiB, if satisfied of the matters mentioned in subsection (3), may make a determination that the debtor has failed to co-operate.
- (3) The matters are—
 - (a) that the debtor has failed to co-operate with AiB as trustee to such an extent that AiB is prevented from carrying out the AiB's functions as trustee under this Act,
 - (b) that the failure is likely to continue, and
 - (c) that AiB has taken all reasonable steps to secure the debtor's co-operation.
- (4) If AiB makes a determination under subsection (2)—
 - (a) AiB must notify the debtor and every creditor known to AiB that AiB has made a determination under subsection (2), and
 - (b) section 116 applies as if there were substituted for subsection (2)—
 - “(2) AiB may at any time before the discharge of the debtor require the debtor to give an account in writing, in such form as may be prescribed, of the debtor's current state of affairs.”, and
 - (c) section 138(6) applies as if for the words “must, as soon as practicable after the date which is 12 months after the date of the refusal” there were substituted “may, at any time after a refusal, if the debtor co-operates with AiB to such an extent that AiB is able to carry out the trustee's functions under this Act.”.
- (3) In section 214 of the Bankruptcy (Scotland) Act 2016, after paragraph(2)(q) insert—

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“(qa) section 147B(5),”.

- (4) In calculating a period of 5 years for the purposes of section 147A(1)(b) or section 147C(1)(b) of the Bankruptcy (Scotland) Act 2016, any part of that period which is before the commencement of subsection (1) may be included.>

Commissioners

Tom Arthur

- 11 After section 5, insert—

<Commissioners: disqualification from office where AiB is trustee

- (1) Part 4 of the Bankruptcy (Scotland) Act 2016 is modified as follows.
- (2) In section 76 (commissioners), in the opening words, after “sequestration” insert “where AiB is not the trustee”.
- (3) In section 77 (election, resignation and removal of commissioners), after subsection (6), insert—

“(6A) A commissioner ceases to hold office if AiB is, or becomes, the trustee.”.>

Arrestment: funds attached

Colin Smyth

- 12 After section 5, insert—

<Earnings arrestments

Earning Arrestments

- (1) Schedule 2 of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In table A (deductions from weekly earnings), for “£150.94” substitute “£230.14” wherever it appears.
- (3) In table B (deductions from monthly earnings), for “£655.83” substitute “£1,000” wherever it appears.
- (4) In table C (deductions from daily earnings), for “£21.56” substitute “£32.87” wherever it appears.>

Colin Smyth

- 25 After section 5, insert—

<Funds attached

Funds attached

- (1) Part 3A of the Debtors (Scotland) Act 1987 is modified as follows.
- (2) In section 73E (funds attached), after subsection (6), insert—
 - “(7) An arrestment to which this section applies shall not attach any funds wholly acquired through social security benefits.

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- (8) Where a creditor is satisfied that attached funds are wholly social security benefits, the creditor should instruct the arrestee to release the funds.
- (9) For the purposes of subsection (7), social security benefits includes payment of any benefits provided by—
 - (a) the Welfare Reform Act 2012,
 - (b) the Social Security Administration Act 1992,
 - (c) the Jobseekers Act 1995,
 - (d) the State Pension Credit Act 2002,
 - (e) the Tax Credits Act 2002,
 - (f) the Welfare Reform Act 2007,
 - (g) the Social Security (Scotland) Act 2018, and
 - (h) the Social Security Contributions and Benefits Act 1992.
- (10) Where subsection (8) applies and funds have been attached by the arrestee in good faith, the arrestee is not liable to the debtor or to any other person having an interest in the funds for damages or patrimonial loss caused by the attachment or any subsequent release of funds.”.>

Paul O’Kane

26 In section 6, page 4, line 31, at end insert—

<() In section 73F (protection of minimum balance in certain bank accounts), after subsection (6), insert—

“(7) Before the end of each financial year, the Scottish Ministers must—

- (a) calculate the inflation-adjusted level of the protected minimum sum mentioned in subsection (3)(a), and
 - (b) bring forward regulations to replace the protected minimum sum where, in their opinion, the sum is materially below its inflation-adjusted level with a figure of at least that level (subject to any rounding they think appropriate).
- (8) Regulations under subsection (7) are subject to the affirmative procedure.”.>

Arrestment: service and disclosure

Tom Arthur

13 In section 6, page 4, line 31, at end insert—

<() After section 73C, insert—

“73CA Service of documents for purposes of sections 73B and 73C

- (1) In relation to the service of documents for the purposes of sections 73B and 73C, the documents may be served on the arrestee—
 - (a) by being delivered personally to the arrestee,

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- (b) by being sent to the proper address of the arrestee—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or
 - (c) by being transmitted to the arrestee electronically.
- (2) For the purpose of subsection (1)(b), the proper address of the arrestee is—
- (a) in the case of a body corporate, the address of the registered or principal office of the body,
 - (b) in the case of a partnership, the address of the principal office of the partnership,
 - (c) in any other case, the last known address of the arrestee.
- (3) Where a document is served as mentioned in subsection (1)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.
- (4) For the purpose of subsection (1)(c)—
- (a) electronic transmission of a document must be effected in a way that the arrestee has indicated to the creditor or officer of court that the arrestee is willing to receive the document,
 - (b) the arrestee’s indication of willingness to receive a document in a particular way may be—
 - (i) specific to the document in question or generally applicable to documents of that kind,
 - (ii) expressed specifically to the creditor or officer of court or generally (for example on a website),
 - (iii) inferred from the arrestee having previously been willing to receive documents from the creditor or officer of court in that way and not having indicated unwillingness to do so again,
 - (c) the creditor or officer of court’s uploading of a document to an electronic storage system from which the arrestee is able to download the document may constitute electronic transmission of the document, where the arrestee is sent a notification that the document has been uploaded in that way,
 - (d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.”.>

Murdo Fraser

4 In section 6, leave out subsection (2), and insert—

<() In section 73G (arrestee’s duty of disclosure), after subsection (5), insert—

“(5A) Subsection (5B) applies where—

- (a) no property is attached, and
- (b) the arrestee receives a request for information from a creditor in relation to a warrant not granted under summary warrant procedure.

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- (5B) The arrestee must, as soon as reasonably practicable after the request is received, send to the creditor in (or as nearly as may be in) the form prescribed information about the reason why no property is attached (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)).”.>

Tom Arthur

14 In section 7, page 5, line 10, at end insert—

<() In section 70 (execution and intimation of copies)—

(a) for subsection (3), substitute—

“(3) An earnings arrestment schedule or a current maintenance arrestment schedule may be served on an employer—

(a) by being delivered personally to the employer,

(b) by being sent to the proper address of the employer—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) by being transmitted to the employer electronically.

(3A) For the purpose of subsection (3)(b), the proper address of the employer is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the employer.

(3B) Where a document is served as mentioned in subsection (3)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(3C) For the purpose of subsection (3)(c)—

(a) electronic transmission of a document must be effected in a way that the employer has indicated to the officer of court that the employer is willing to receive the document,

(b) the employer’s indication of willingness to receive a document in a particular way may be—

(i) specific to the document in question or generally applicable to documents of that kind,

(ii) expressed specifically to the officer of court or generally (for example on a website),

(iii) inferred from the employer having previously been willing to receive documents from the officer of court in that way and not having indicated unwillingness to do so again,

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- (c) the officer of court's uploading of a document to an electronic storage system from which the employer is able to download the document may constitute electronic transmission of the document, where the employer is sent a notification that the document has been uploaded in that way,
 - (d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.”, and
- (b) for subsection (5), substitute—
- “(5) Section 12(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 applies to the service of an earnings arrestment schedule, a current maintenance arrestment schedule or a conjoined arrestment order as it applies to the execution of an attachment except where such service is by post or transmitted electronically.”.>

Murdo Fraser

- 5 In section 7, page 5, line 22, after <nil,> insert <and,
<(c) the person receives a request from a relevant person for information, >

Murdo Fraser

- 6 In section 7, page 5, line 23, leave out <within 21 days of the order or schedule being served> and insert <as soon as is reasonably practicable following receipt of the request>

Arrestment of ships

Tom Arthur

- 15 After section 10, insert—

<Arrestment of ships

Arrestment of ships on a Sunday

Any rule of law that prevents the execution of an arrestment on a Sunday ceases to have effect insofar as it relates to the arrestment of ships.>

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