

BANKRUPTCY AND DILIGENCE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This supplementary Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.9 of the Parliament's Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Bankruptcy and Diligence (Scotland) Bill ("the Bill"). This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

3. The amended or new delegated powers in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 5B: Failure of debtor to co-operate with trustee in sequestration

Power conferred on:	Scottish Ministers
Power exercisable by:	Regulations made by Scottish statutory instrument
Parliamentary procedure:	negative
Revised or new power:	new

Provision

4. Section 5B will insert a new section 147A in the Bankruptcy (Scotland) Act 2016 ("the 2016 Act"). Section 147A provides a process for a trustee in a sequestration to apply for authority to resign from office and to transfer a sequestration to the Accountant in Bankruptcy where the debtor has failed to cooperate with the trustee. Section 147A(3) provides that an

application by the trustee for authority to resign must be in the prescribed form and subsection 147A(5) provides that an intention to resign notice (which must be issued by the trustee to both the debtor and all known creditors before an application is made) must also be in the prescribed form. Section 147A(6) provides that, if the Accountant in Bankruptcy grants the trustee's application, notice must be given to the trustee in the prescribed form.

5. The term "prescribed" as used in three places in the new section 147A will be caught by the definition of that term in section 228 of the 2016 Act, meaning that the three new forms will be prescribed by regulations made under that section. The Regulations will be subject to the negative procedure under section 225 of the 2016 Act.

Reason for taking power

6. The forms will allow for the development of a standard process for providing the required information to support the new process whereby a trustee may apply to resign for non-cooperation. This will also ensure that only information required to be passed between the parties is disclosed. As these are largely procedural matters, it is considered appropriate for this to be set out in regulations, and this is consistent with a number of other forms used in bankruptcy processes. This will also allow the forms to be amended easily where necessary, for example to respond to changing circumstances.

Choice of procedure

7. The power to prescribe forms will be subject to the negative procedure. The negative procedure is considered appropriate given the procedural nature of prescribing a form.

This document relates to the Bankruptcy and Diligence (Scotland) Bill (SP Bill 27A) as amended at Stage 2

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