

## Bankruptcy and Diligence etc (Scotland) Bill

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Introduced on:	21 November 2005
Introduced by:	Alan Wilson Deputy Minister for Environment and Lifelong Learning (Executive Bill)
Passed:	30 November 2006
Royal Assent	15 January 2007

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### Passage of the Bill

The Bankruptcy and Diligence etc. (Scotland) Bill was introduced on 21 November 2005. The Enterprise and Culture Committee, as the lead committee, began taking Stage 1 oral evidence on 6 December 2005. The Committee published its Stage 1 report on 17 May 2006 with the Stage 1 debate taking place on 24 May. The Committee considered amendments to the Bill at Stage 2 between 13 June and 7 November. The Bill was passed following the Stage 3 debate on 30 November 2006 and received Royal Assent on 15 January 2007.

### Purpose and objectives of the Bill

The Bill aims to:

- modernise the laws of personal bankruptcy and diligence to strike a better balance between the rights of creditors and debtors
- support business risk, thereby helping to promote an entrepreneurial culture and grow the economy
- modernise the law of floating charges to remove existing uncertainties and make arrangements more transparent.

### Provisions of the Bill

The Bill changes the law on bankruptcy by:

- reducing the period of bankruptcy from three years to one year
- introducing Bankruptcy Restrictions Orders and Undertakings on potentially fraudulent or culpable debtors
- requiring debtors to contribute towards their sequestration, where possible, by introducing income payment orders and agreements
- reforming the requirements for "apparent insolvency"
- reforming restrictions and disqualifications on debtors
- increasing transparency in and monitoring of Protected Trust Deeds
- streamlining the bankruptcy process and reducing court involvement

- taking bankruptcy proceedings out of the Court of Session and consolidating them in the sheriff courts

The Bill makes provision for a new Register of Floating Charges to be maintained by the Keeper of the Registers of Scotland and establishes a Scottish Civil Enforcement Commission to operate as the sole regulatory body where all matters relating to enforcement are determined and overseen. The Bill also reforms the main types of diligence, the legal term for the procedures by which orders of the civil courts are enforced.

### **Parliamentary consideration**

The Finance Committee welcomed the reduction in the period of bankruptcy but despite calls for the period of repayment to be similarly reduced the Committee supported the Bill proposals that debtors be subject to a longer period for the repayment of debts.

The Finance Committee was concerned that bankruptcy proceedings should not cause homelessness and recommended that the debtor's main home should be excluded from the scope of proposals for land attachment. This was not accepted but the Bill was amended at Stage 3 to raise the minimum debt from £1,500 to £3,000 before a creditor can institute bankruptcy proceedings. A proposal to set the minimum at £5,000 was defeated.

Amendments were lodged at Stage 2 to give a prior claim to credit unions when distributing the assets of debtors who have entered into a protected trust deed. These were withdrawn or not moved on assurances from the Minister that he would consider the concerns expressed. The Bill was amended to allow Scottish Ministers to make regulations on the extent to which a debtor may be discharged, by virtue of a protected trust deed, from his liabilities or from such liabilities or class of liabilities as may be prescribed in the regulations.

The Bill as introduced proposed that the terms "messengers at arms" and "sheriff officers" be replaced with "messenger of court" but this was not popular with the profession. The Bill was amended at Stage 2 to replace "messenger of court" with "judicial officer".

Concerns were raised by witnesses during Stage 1 that a debtor may be subject to an earnings arrestment and an arrestment of their bank account at the same time. There was also concern at the lack of protection from arrestment of tax credits and social security benefits paid into bank accounts. Amendments were lodged by the Minister at Stage 2 to allow a debtor to apply for an order to stop an arrestment in respect of all or some of the funds attached if the arrestment is 'unduly harsh'. If a debtor applies for such an order, automatic release of funds is stopped. The new sections grant the sheriff the power to make an order for the release of those funds attached, where they consider the arrestment to be unduly harsh. The amendments were agreed to at Stage 2. The Minister also stated in evidence at Stage 2

that he would be happy to have further discussions with the banking sector about whether technology could simplify the process of protecting funds.

The Minister lodged an amendment at Stage 2 to introduce a new section to the Debtors (Scotland) Act 1987 to prevent debtors who receive holiday pay in advance having larger proportions of their earnings deducted. The amendment changes the Bill to treat holiday pay as a separate payment or payments made for the pay period or periods during which the debtor is on holiday and not as if it were an increase added to the normal pay. The amendment was agreed to at Stage 2.

The Debt Arrangement and Attachment (Scotland) Act 2002 introduced the debt advice and information package. The Bill as introduced made provision for debtors to be provided with information about enforcement as well as contact details of free local money advisers before diligences for land attachment or residual attachment are competent. However there was concern at the time lapse which can occur between issuing the package and implementing a charge to pay. Amendments were lodged which provide that the package must be served within 12 weeks of either the registration of a notice of land attachment or an application to the court for a residual attachment order. The amendments were agreed to at Stage 3.

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