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Bankruptcy and Debt Advice (Scotland) Bill

Bill Number:	SP Bill 34
Introduced on:	11 June 2013
Introduced by:	John Swinney MSP (Government Bill)
Passed:	20 March 2014
Royal Assent:	29 April 2014

Passage of the Bill

The Bankruptcy and Debt Advice (Scotland) Bill was introduced in the Scottish Parliament on 11 June 2013 by the Scottish Government. The Economy, Enterprise and Tourism Committee (the Economy Committee) conducted Stage 1 scrutiny at meetings in September, October and November 2013.

The Finance Committee wrote to the Economy Committee on 18 September 2013 outlining the views it had received on the Bill's Financial Memorandum. The Delegated Powers and Law Reform Committee reported on the delegated powers contained in the Bill (54th Report 2013 (Session 4)).

The Economy Committee published its Stage 1 report on 3 December 2013 and the Stage 1 Debate took place on 18 December 2013. The Scottish Government responded to the Stage 1 Report in two letters to the Convener of the Economy Committee, dated 14 January 2014 and 21 January 2014.

The Economy Committee considered amendments to the Bill at Stage 2 on 22nd January 2014. The Stage 3 debate took place on 20 March 2014. The Bill, as amended, received Royal Assent on 29 April 2014 to become the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11).

Purpose and objectives of the Bill

The Bill made a number of changes to personal bankruptcy law in Scotland. It was part of a suite of legislation which reformed "statutory debt solutions" (options provided for in legislation for those who cannot pay their debts) more generally, including the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013 and the Protected Trust Deeds (Scotland) Regulations 2013. The reforms harmonised a debtor's treatment in relation to the various statutory options – for example, by ensuring that contributions from income are for the same amount and are made for the same length of time. The Scottish Government argued that the changes better balanced the needs of debtors and creditors.

Following on from the Bankruptcy and Debt Advice (Scotland) Act 2014, it is expected that the Scottish Government will introduce a Bankruptcy Consolidation Bill to consolidate the changes made by the 2014 Act and other legislation to the Bankruptcy (Scotland) Act 1985.

Provisions of the Bill

The key changes made by the Bill were:

- compulsory money advice for those entering bankruptcy
- financial education for bankrupt debtors whose circumstances indicate that it may be beneficial
- a "common financial tool" to be used to calculate how much of a debtor's income can be used to repay creditors.
- an extension of the time period a debtor may be expected to make payments from income from three to four years
- a "Minimal Asset Process" route into bankruptcy for those with little income and few assets.
- a freeze on a creditor's ability to enforce debts (also known as a "moratorium on diligence") while an application for a statutory debt solution is made
- removal of automatic discharge from bankruptcy
- transfer of powers from the sheriff court to the Accountant in Bankruptcy

Parliamentary consideration

The provisions of the Bill which proved most controversial during its parliamentary passage were:

- **an increase in the time during which the practical effects of bankruptcy would be felt from three to four years** – the Bill's provisions extended the time period for which bankrupt debtors (who are assessed as being able to afford do so) make contributions from their income. It also extended the time period during which any assets acquired by a debtor automatically become the property of the trustee in the bankruptcy. Many stakeholders argued that these extensions punished debtors without resulting in clear advantages to creditors

- **the fee paid by debtors to enter bankruptcy** – the Bill did not set a fee to enter bankruptcy. However, it did introduce a new route (the "Minimal Asset Process") into bankruptcy for low income debtors, accompanied by assurances that the cost to debtors of using this route would be less than under the current processes. Some stakeholders argued that any fee to enter bankruptcy was an unnecessary barrier for debtors

- **the removal of automatic discharge from bankruptcy** – the Bill introduced a new procedure for gaining discharge from bankruptcy which was specifically linked to a debtor's co-operation during the bankruptcy process. Some stakeholders expressed concerns, both around the technical feasibility of the procedure and in relation to potential unintended consequences, such as debtors being stuck in bankruptcy for years

The Scottish Government brought forward Stage 2 amendments in a number of areas, including: to increase the maximum debt level which could be dealt with under the Minimal Asset Process; to make technical changes to the procedures covering discharge from bankruptcy; and to enable the Accountant in Bankruptcy to apply to a sheriff for advice when dealing with responsibilities which had previously been covered by the courts.

In addition, the Scottish Government amended the Bill to provide that trustees in bankruptcy could only recover assets directly from a bank where they had given written notice to the bank identifying the debtor and the funds in question. The purpose of this amendment was to reduce the risk to banks of offering accounts to undischarged bankrupts. It was hoped that its effect would be to make it easier for those in bankruptcy to access a bank account.

Opposition amendments to keep the time period during which contributions from income may be made at three years, remove the Accountant in Bankruptcy's ability to charge a fee for entering bankruptcy via the Minimum Asset Process and to re-instate automatic discharge, were not agreed to.

The Scottish Government brought forward a number of technical amendments at Stage 3, which were agreed to. Opposition amendments dealing with contributions from income and re-instating automatic discharge were again disagreed to. The Bill, as amended, was passed without division.

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