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Economy, Energy and Tourism Committee

The remit of the Committee is to consider and report on the Scottish economy, enterprise, energy, tourism, renewables and other matters falling within the responsibility of the Cabinet Secretary for Finance, Constitution and Economy (apart from those covered by the remit of the Infrastructure and Capital Investment Committee), and matters relating to cities.

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Johann Lamont
Scottish Labour

Richard Lyle
Scottish National Party

Gordon MacDonald
Scottish National Party

Lewis Macdonald
Scottish Labour

Joan McAlpine
Scottish National Party
Introduction

1. At its meeting on 10\textsuperscript{th} February 2016 the Committee took evidence on two affirmative instruments, \textit{the Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2016 [draft]}, and \textit{the Public Services Reform (Insolvency) (Scotland) Order 2016 [draft]}. The Committee took evidence from the Minister for Business, Energy and Tourism and officials.

2. The Official Report of the meeting will be available on \textit{Tuesday 16 February}.

Affirmative Instruments

The Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2016 [draft]

3. The amending Order was laid on Monday 21\textsuperscript{st} December 2015.

4. The amending Order makes minor amendments to \textit{the Bankruptcy (Scotland) Act 1985}, in consequence of paragraphs 6(a) and 7 of schedule 3 to the 2014 Act, which made clear that limited liability partnerships cannot be sequestrated, and clarified the meaning of apparent insolvency.

5. These paragraphs enacted recommendations 4 and 5 from the Scottish Law Commission Report on the Consolidation of Bankruptcy Legislation in Scotland. The need for the amendments was raised by the Delegated Powers and Law Reform Committee of the Scottish Parliament in connection with the Bankruptcy (Scotland) Bill currently before the Scottish Parliament.

6. The two consequential amendments to the provisions in the Bankruptcy (Scotland) Act 1985 on apparent insolvency in this Order are required to give full effect to the changes in the 1985 Act by paragraphs 6(a) and 7 of schedule 3 of the 2014 Act. They clarify cross-references in provisions on when the apparent insolvency of a debtor is constituted and providing that for the avoidance of doubt the fact limited liability partnerships cannot be sequestrated does not affect their apparent insolvency.

7. The \textit{policy note} on the instrument provides more information on the policy intent including consultation and impact assessments.
Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered the amending Order on 12 January 2016 and published its report the following day. In its report, the DPLR Committee agreed that no points arose in relation to the instrument.

Economy, Energy and Tourism Committee consideration

9. The Committee considered the amending Order and did not raise any points with the Minister for Business, Energy and Tourism.


The motion was agreed to.

The Public Services Reform (Insolvency) (Scotland) Order 2016

10. The amending Order will amend the Insolvency Act 1986 (“the Insolvency Act”) for the purposes of modernising devolved aspects of corporate insolvency in Scotland (aspects of the process of liquidation and receivership) in line with amendments made in England and Wales and reserved aspects of corporate insolvency in Scotland by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (“the 2010 LRO”). It will also make related consequential amendments including to the Small Business, Enterprise and Employment Act 2015 (“the 2015 Act”), the Limited Liability Partnerships (Scotland) Regulations 2001 (“ the LLPSR 2001”), the Limited Liability Partnership Regulations 2001 (“the LLPR 2001”) and repeal section 51(2ZA) of the Insolvency Act to remove a geographical restriction relating to a receiver dealing with property related to Scotland.

11. The amendments in relation to the Insolvency Act are:-

- amendment to section 92A to require a liquidator in a members’ voluntary winding up (“MVWU”) in Scotland to produce a progress report on certain matters for prescribed periods, then send these reports to prescribed members of the company and other interested parties;

- a related amendment to remove the section 93 requirement for annual meetings in a MVWU continuing for longer than one year;

- amendment to section 104A to require a liquidator in a company voluntary winding up (“CVWU”) in Scotland to produce a progress report on certain matters for prescribed periods, then send these reports to members and creditors of the company unless they are opted out (and such other persons as may be prescribed under the Insolvency Rules under the Insolvency Act);
• a related amendment to remove the section 105 requirement for annual meetings in a CVWU continuing for longer than one year;

• repealing consequential amendments in schedule 9 to the 2015 Act which fall as a result of repealing sections 93 and 105;

• consequential amendments to schedules 2 and 3 of the LLPSR 2001 as result of repealing sections 93 and 105;

• consequential amendments to schedules 3 and 4 of the LLPR 2001 as a result of repealing sections 93 and 105;

• amendments to replace requirements for certain documents to be verified as true by affidavit and instead allow verification by a statement equivalent to a statement on oath in line with the requirement for company administration at present, which complies with the Statutory Declarations Act 1835:-

• in a statement of affairs in a receivership (section 66)

• in a statement as to the affairs of a company (section 95)

• in a statement of affairs in a CVWU (section 99)

• in a statement of affairs in a winding up by the court (section 131)

• amendment to section 246B to remove the restriction on use of websites to send notices or information in Liquidation and Receivership in Scotland;

• amendment to section 436B in order to allow a report by a receiver to be in electronic form and allow a Liquidator to make appointment under the Companies Clauses Consolidation (Scotland) Act 1845 by way of a document in electronic form;

• repeal of section 51(2ZA) to remove a geographical restriction relating to a receiver dealing with property related to Scotland;

• repeal of section 57(2D) to remove redundant provision about wages in receivership as the employment contracts to which it relates no longer exist;

• amendment to section 204(2) to allow the liquidator to apply to the court at any time for the early dissolution of the company;

12. The **policy note** on the instrument provides more information on the policy intent including consultation and impact assessments.

**Super-affirmative procedure and consultation**

13. On 30 September 2015 the instrument was introduced in **proposed draft form** subject to the super-affirmative procedure, which allowed the Committee to consult on the draft instrument prior to it being laid as an affirmative instrument.
14. In addition, the Scottish Government’s Accountant in Bankruptcy (AiB) consulted on the proposals with key stakeholder groups, providing them with an opportunity to raise any concerns and engage in constructive dialogue. This process resulted in a number of stakeholder comments being reflected in the proposed draft Order as laid for consultation under section 26 of the 2010 Act.

15. The Committee received two responses to its consultation, from R3, the Association of Business Recovery Professionals (R3), and the Institute of Chartered Accountants of Scotland (ICAS). The content of these submissions replicated that provided directly in response to the Scottish Government’s consultation, and full details of changes made, or not made, to the order in response to consultation are detailed in the policy note.

Delegated Powers and Law Reform Committee consideration

16. The Delegated Powers and Law Reform Committee considered the amending Order on 26 January 2016 and published its report the same day. In its report, the DPLR Committee agreed that no points arose in relation to the instrument.

Economy, Energy and Tourism Committee consideration

17. The Committee considered the amending Order and raised points on the submissions received as part of the super-affirmative procedure from ICAS and R3. When asked how the concerns raised by stakeholders which did not lead to subsequent amendments to the draft affirmative would be addressed, the Minister made reference to the plans set out in section 10 of the policy note.

18. The Minister for Business, Energy and Tourism moved motion S4M-15461—That the Economy, Energy and Tourism Committee recommends that the Public Services Reform (Insolvency) (Scotland) Order 2016 [draft] be approved.

The motion was agreed to.

Recommendations

19. The Committee recommends that the Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2016 [draft] and the Public Services Reform (Insolvency) (Scotland) Order 2016 [draft] be approved.