



## **Economy, Tourism and Energy Committee**

**Tuesday, 23 June 2026**

**1<sup>st</sup> Meeting, 2026 (Session 7)**

# **Debt and insolvency – an overview**

## **Purpose of this paper**

The purpose of this paper is to give an overview of the subject of debt and insolvency, which falls within the Committee’s remit. It also highlights some current initiatives which could form the focus of Committee scrutiny.

## **Reserved and devolved competence**

Very broadly, personal debt options, including bankruptcy, are within the competence of the Scottish Parliament whereas corporate insolvency options are mainly reserved to the UK Parliament. However, in practice, the division is much more complicated, with some corporate insolvency processes and most court procedure within the competence of the Scottish Parliament.

Personal debt options cover sole traders and traditional partnerships as well as individuals. Corporate insolvency options cover companies and limited liability partnerships.

## **The personal debt landscape**

The main policy intervention to deal with debt problems is to provide formal frameworks (“statutory debt solutions”) under which people can repay what they can or have unmanageable debt written off. The policy intention across all options is to provide an orderly mechanism for repayment to competing creditors, while also providing rehabilitation to debtors.

However, it is important to understand that the majority of people with debt problems negotiate repayments with their creditors outside any formal solution. This can happen with or without the assistance of a money adviser. Such arrangements offer flexibility, but they can also be unstable (with creditors able to demand higher payments) and burdensome to deal with.

Changes to the criteria for accessing statutory debt solutions creates different incentives and disincentives for debtors. They can also have an impact on creditor behaviour, as well as how much money they can recover.

## **Entering a statutory debt solution**

The best option for someone in debt will depend on their personal circumstances. There are various legal requirements to be met for each statutory debt solution. It will

also depend on the person in debt's prospects for the next few years - for example, if their financial situation might improve.

The criteria for entering a statutory debt solution are regulated by legislation. These solutions can have significant advantages:

- once someone in debt enters a statutory debt solution, their creditors can no longer contact them about payments; take them to court; or carry out formal debt enforcement action
- once a solution is formally in place (and there is usually an objections process for creditors in advance of this), all creditors must comply with it, even those who objected
- the person in debt makes regular, stable, consolidated payments to the person or body administering their solution, rather than having to make a range of payments to individual creditors.

There are three statutory debt solutions in Scotland. These are bankruptcy, a Protected Trust Deed (PTD) and the Debt Arrangement Scheme (DAS).

### **Bankruptcy**

In bankruptcy, all of a debtor's non-essential assets are managed by a "trustee" (an insolvency practitioner or the Accountant in Bankruptcy) for the benefit of creditors, generally for a four year period. This usually means that any assets will be sold. Where a debtor is assessed as having surplus income, they will also have to make regular payments from this.

People can apply for their own bankruptcy. Creditors can also force someone into bankruptcy if they owe at least £5,000.

There are two different types of bankruptcy. Minimal Asset Process bankruptcy can be used by people with low income and few assets. Full administration bankruptcy covers all other situations.

- **Main advantage:** almost all debts are written off at the end
- **Main disadvantages:** a debtor's assets, including a family home, will usually be sold; creditors usually receive only a small proportion of what they are owed.

### **Protected Trust Deeds**

As with bankruptcy, a debtor's assets are managed by a trustee for the benefit of creditors for a minimum of four years. This period can be extended, depending on the circumstances of the debtor. The debtor will also usually make contributions from their income. The money available has to be sufficient to pay the trustee's fees and provide a return to creditors.

- **Main advantages:** more flexible than bankruptcy - for example, it is usually possible to avoid selling the family home; almost all debts are written off at the end of the process

- **Main disadvantages:** trustee fees eat into returns to creditors, so that they may receive very little; debtors need sufficient income to make the required contributions.

### **Debt Payment Programmes under the Debt Arrangement Scheme**

The Debt Arrangement Scheme enables debtors to pay their debts over an extended period of time. It can last for any "reasonable" time period, but the average is around six years.

- **Main advantages:** there is no requirement to sell assets; creditors receive most of the money which is repaid
- **Main disadvantages:** there are only limited opportunities to write off debt. This means it is only available to people who can repay their debts in full over a reasonable period, which is a small proportion of people with debt problems.

### **Money advice**

Anyone voluntarily entering a statutory debt solution must receive advice. This advice can come from an accredited money adviser in the free sector (such as a Citizens Advice Bureau or local authority money adviser), or from a private provider. It can also come from an insolvency practitioner (in particular, for Protected Trust Deeds).

People can be forced into bankruptcy by their creditors. In this situation, there is no requirement to receive advice.

### **The Accountant in Bankruptcy**

Accountant in Bankruptcy is the term for both the Scottish Government agency which supervises statutory debt solutions and the individual office holder who heads up that agency. Among other functions, the Accountant in Bankruptcy can take the role of trustee in a bankruptcy where no one else has been nominated to act. This happens in the majority of cases.

## **Debt enforcement**

Another element in the policy landscape is the options available to a creditor to enforce payment from a debtor. Creditors who have the authority of the courts (usually because they have raised court action against the debtor) have a range of court-sanctioned debt enforcement options available to them. The technical term for these is "diligence".

### **How formal debt enforcement is used**

Diligence is what traditional creditors (with the authority of the court) use to enforce payments of debts like credit cards or loans. Note though that these types of creditors do not take court action often. Instead, they rely on contact with the debtor to encourage repayment.

However, diligence is also what is used by people who have been successful in court action where the losing party doesn't pay. So, if someone won a court claim against their builder for poor work, or their employer for failing to pay wages, they would also rely on these enforcement mechanisms.

The options available should therefore preserve a balance between not being too harsh on debtors while remaining an effective way of recovering money owed.

## Enforcement options

All diligence is undertaken by officers of the courts – Sheriff Officers in the sheriff courts and Messengers-At-Arms in the Court of Session. Court officers charge a fee for the work, which is set in legislation. It is possible to recover this fee from the debtor, but only if enforcement action is successful.

Enforcement options include:

- **attachment** – seizing property in the possession of the debtor – e.g. goods in a storeroom or money in a till (**money attachment**). A creditor who wishes to seize property in a debtor's home must go through an extra court process to get an **exceptional attachment order**
- **arrestment** - seizing property belonging to the debtor in the hands of a third party – e.g. money in a bank account (**bank arrestment**) or wages in the hands of an employer (**earnings arrestment**)
- **inhibition** – preventing the debtor dealing with land or buildings they own (such as selling a house) until the debt is paid off.

As noted above, it is also possible to force a debtor into bankruptcy. However, there are costs associated with this and the risk that very little of what is owed will be recovered.

The specific role of councils in recovering council tax debt is also worth highlighting. Recovery of council tax debt accounts for the vast majority of diligence processes in Scotland. Councils have access to an expedited process – called **summary warrant** – to enforce council tax debt. This is an administrative process, meaning that there is no court hearing. An automatic surcharge of 10% is added to a debt pursued under summary warrant.

## Current policy initiatives

### The Mental Health Moratorium

The Session 6 Economy and Fair Work Committee was responsible for scrutiny of the [Bankruptcy and Diligence \(Scotland\) Act 2024](#). The legislation included enabling powers to introduce a “Mental Health Moratorium”. The purpose of a Mental Health Moratorium would be to freeze creditors' powers to take debt enforcement action against a person in mental health crisis.

However, the 2024 Act contains no information on how the Moratorium would work. Instead, it contains wide enabling powers for Scottish Ministers to bring forward regulations on the subject.

In response to parliamentary concerns about a lack of detail about the policy, the 2024 Act set out that regulations would be subject to an enhanced consultation procedure. The operation of the Moratorium would also be subject to review after five years.

The [Session 6 Committee responded to draft regulations proposed by the Minister for Public Finance](#), laying out some concerns. The Minister for Public Finance has since [written to the Committee to state that final regulations would not be laid in Session 6](#).

Regulations are expected early in this parliamentary Session. This could be an area for early Committee scrutiny.

## **Debt enforcement provisions in the 2024 Act**

Several amendments at Stage 3 added new provisions into the 2024 Act. These covered protecting more money when wages are subject to earnings arrestment and protecting social security benefits when bank accounts are subject to bank arrestment. The Scottish Government is current consulting on these – and several other – diligence reforms.

The Stage 3 debate is discussed in more detail in the SPICe blog [Stage 3 of the Bankruptcy and Diligence \(Scotland\) Bill](#).

The Scottish Government's proposals and progress towards diligence reform could also be a topic for Committee scrutiny.

## **Review of statutory debt solutions**

For the past six years, the Scottish Government – through its agency the Accountant in Bankruptcy – has been taking forward a [review of statutory debt solutions](#). A holistic approach to reform in this area was originally recommended by the Session 5 Economy, Energy and Fair Work Committee.

The final stage of this review took the form of an independent “strategic review of Scottish statutory debt solutions to assess if they meet the needs of a modern economy”. It [reported in March 2026](#).

Recommendations are wide-ranging, covering things like:

- better support when a statutory debt solution fails or someone in a statutory debt solution dies
- best practice in joined up approaches between public sector creditors and funders and advice providers
- how equity in a family home should be treated in insolvency

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- debt advice and more effective debt solutions for small businesses.

These recommendations, and what they mean for debt and insolvency stakeholders, could be the subject of investigation by the Committee.

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