



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
Room T1.01
Scottish Parliament
0131 348 5212
DPLR.Committee@scottish.parliament.uk

Gregor Clark CB
Parliamentary Counsel
Scottish Law Commission

Copy to: Graham Fisher,
Head of Branch 1, Civil and Constitutional Law Division
Scottish Government Legal Directorate

15 December 2015

Bankruptcy (Scotland) Bill

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 15 December and seeks an explanation of the following matters:

Part 17
Section 206

2. Subsections (1) to (4) of section 206 refer to the creditor, the obligant and the debtor. Subsection (5) of section 206 of the Bill states that “subsection (4) is without prejudice to any right, under any rule of law, of a co-obligant who has paid the debt”.

3. The drafter’s response, received by the Committee on 11th December 2015, states that the creditor and the obligant are co-obligants. The drafter’s response further states that subsection (5) of section 206 refers to any right, under any rule of law, in terms of which the creditor and the obligant are both co-obligants.

4. Section 60(1) of the 1985 Act refers to the obligant as the “co-obligant” and does not refer to the creditor as such.

5. **The Committee asks the drafter:**

Why it is considered that the creditor and the debtor are both co-obligants?

Schedule 1
Paragraph 5(4)

6. Paragraph 5(4) of Schedule 1 to the Bill substitutes section 116(2) to the Bill for certain purposes. New section 116(2)(b) (as substituted) provides that the debtor must provide a financial statement within 6 months beginning with the day on which the account is given under new section 116(2)(a).

7. The equivalent provision of the 1985 Act (Schedule A1, paragraph 5(4)(b)) provides that the debtor must provide this statement on the expiry of the period of 6 months beginning with the day on which the statement is given under paragraph (a).

8. The drafter's notes submitted at introduction refer, at paragraph 81, to references within the Bill to times by which something is to happen. Paragraph 81 does not specifically address the difference in wording between "within 6 months" and "on the expiry of the period of 6 months".

9. **The Committee asks the drafter:**

Why the words "on the expiry of the period of 6 months" in paragraph 5(4) of Schedule A1 to the 1985 Act have been changed to "within 6 months" in section 116(2)(b) paragraph 5(4) to Schedule 1 to the Bill?

What effect is this considered to have on the meaning of the provision?

10. Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by **10am on Monday 21 December**.

Deborah Cook
Assistant Clerk to the Committee