

Drafter's response as regards the explanations sought by the Delegated Powers and Law Reform Committee in their e-mail of 15th December with regard to section 206 of the Bankruptcy (Scotland) Bill and paragraph 5(4) of schedule 1 of that Bill

Paragraphs 2 to 5: the drafter apologises for a confusion between “creditor” and “debtor” in his earlier response (that received by the Committee on 11th December) regarding section 206 of the Bankruptcy (Scotland) Act 1985. The response ought to have read:

“It was considered that what was narrated in subsection (1) of section 206 of the current Bill sufficed to set the scene. The **debtor** and the obligant (both of whom are in fact co-obligants) are sufficiently differentiated and there is no need to take the further step, as section 60 of the Bankruptcy (Scotland) Act 1985 does, of calling the latter “the co-obligant”. Subsections (1) to (4) of section 206 then take up the terminology introduced by subsection (1). Subsection (5) of section 206 is distinct in that it refers to any right under any rule of law: and in terms of any such right the **debtor** and the obligant are both co-obligants and it would be confusing to refer to them in any other way.”.

Paragraphs 6 to 9: the drafter concedes that, while paragraph 81 of the notes submitted by him at Introduction explains the changes made to paragraphs (a) and (c) of section 43A(2) of the Bankruptcy (Scotland) Act 1985 (as substituted by paragraph 5(4) of schedule A1 of that Act) it does not explain the change made to paragraph (b) of 43A(2). On further reflection the drafter considers that, if we are to ensure that the law remains unchanged, then in paragraph (b) of the equivalent provision of the current Bill (substituted section 116(2)) the words “on the expiry of” should be substituted for the word “within”.

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