

Submission on the Bankruptcy (Scotland) Bill consolidation to the Delegated Powers and Law Reform Committee

I do not have an opinion on questions 2-3.

In relation to question 1. If the consolidation results in legislation that is easier to find, follow and apply then it is to be encouraged and supported.

In relation to question 4: Do you have any views on the approach taken in the Bill to consolidation?

I am aware that this is a consolidation process and as such cannot make substantive changes to the law. I would however, like to bring to the Committee's attention the following and, through my MSP, Sarah Boyack, bring this to the attention of other relevant MSPs and Committees to ensure that Scottish families do not continue to be put at a disadvantage as compared to their English and Welsh counterparts.

My recent article on the subject is below:

"Millions of pounds of unpaid child maintenance are wiped off by parents in Scotland through a loophole in Scottish law which does not exist in English law.

Scottish-resident separated and divorced parents with care of the children of the relationship, have been adversely effected by the difference between bankruptcy law in Scotland compared to England.

Put simply, in England

- arrears of maintenance or maintenance payments ordered by a court;
- Child Support Agency and Child Maintenance Service arrears;

are protected debts (much in the same way as debts to the government such as taxes and student loans are protected debts) and as such survive bankruptcy.

In Scotland it is not clear but it seems that it is "the obligation" to pay child and spousal maintenance that is protected and this has been interpreted to mean that arrears of maintenance prior to sequestration (the Scottish term for bankruptcy) are written off.

The clearest example of this is to go to the National Debt Helpline website. Look carefully in the top right hand corner and there is a picture of the Welsh Dragon and St George's cross then a picture of the Saltire. Click on the Welsh and English icons and you see [this](#) and on the Saltire and you get [this](#).

Many have drawn attention to the hardship this causes Scottish families and articles have appeared in several publications including The Telegraph, [The Daily Record](#), The Times and Accountants in Bankruptcy [publication](#).

There are so many heartbreaking stories of the hardship and abuse this causes and perpetuates.

As the Scottish Women's Aid points out in its review of the [bankruptcy laws](#)

“Our local Women’s Aid groups and the women they support have reported that abusers have deliberately delayed or not made payments to meet child support obligations. This is not an issue of affordability but a determined choice to continue the abuse and the financial dependency of the woman on the abuser, thereby undermining the attempts of the woman and her child to build a new life away from the perpetrator. Child support obligations are statutory obligations for the maintenance of children. They are quite different from other debts and non-payment of them to the mother and child can, and does, result in hardship. We would not like to see this being used as a loophole whereby abusers could place themselves in bankruptcy to avoid paying arrears of child maintenance, which can be substantial.”

I have my own personal experience.

My ex-husband currently owes over £36,000 in unpaid child maintenance. Able to manipulate his income and assets (he runs his own companies and works with his current wife), he threatens to bankrupt himself if I take action to chase the debts or speak about them in public. In 2008 his bankruptcy wiped off over a further five figure sum in unpaid child maintenance and spousal maintenance. In England no one can use bankruptcy, or threaten to use it, to wipe off unpaid child or spousal maintenance.

The law in Scotland needs to be brought in line with the English approach to bankruptcy so that no family is worse off because it lives in Scotland rather than England and that the law can not be used to financially abuse and threaten any one, not least a struggling single parent.

Right now a [Bankruptcy Consolidation Bill](#) is going through the Scottish Parliament and there has been a [call for evidence](#). Whilst the introduction of a consolidation bill might not be the usual time to change law I hope it will put a spotlight on this anomaly in Scottish law.

It may even be the case that the law in Scotland needs not to be changed but to be clarified. Certainly there is deeply conflicting opinion on this issue. I have personally been given conflicting legal advice. Many argue that there was never an intention to disadvantage Scottish families. They argue that there was always an intention to ensure child maintenance was a protected debt in Scotland as it is in England and the words “obligation to pay child maintenance” have been interpreted too narrowly. Perhaps this Consolidation Bill is a perfect opportunity to clarify existing law on this matter.

It is time to make sure no more Scottish families are worse off than those in England once and for all. It is time to show that Scottish children matter. “

8th December 2015