



The Scottish Parliament  
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee  
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Scottish Parliament  
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Parliamentary Counsel  
Scottish Law Commission

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Dear Graham,

### **Bankruptcy (Scotland) Bill**

Thank you for giving evidence to the Delegated Powers and Law Reform Committee on the 1 December 2015. At that meeting, the Committee asked questions relating to consequential amendments in section 16 of the Bankruptcy Scotland Bill (“the Bill”). I am writing to seek confirmation of the Government’s intentions in respect of these amendments.

By way of recap, it appears that both subsections (6) and (7)(b) of section 16 of the Bill go further than the relevant provisions of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”), which the Bill restates.

Section 16(6) of the Bill restates section 7(4) of the 1985 Act. Section 7(4) of the 1985 Act provides that the apparent insolvency of a Companies Act company and any other entity in respect of which an enactment provides that sequestration is incompetent may be constituted under section 7. Section 16(6) of the Bill, on the other hand, provides that the apparent insolvency of a Companies Act company, a *limited liability partnership* and any other entity in respect of which an enactment provides that sequestration is incompetent may be constituted under section 16.

Section 16(7)(b) of the Bill provides that a debtor's apparent insolvency continues, if constituted under section 16(1)(c), (e), (f), (g), (h) or (i) of the Bill, until the debtor becomes able to pay off the relevant debts. Section 16(7)(b) of the Bill is derived from section 7(2)(b) of the 1985 Act (as amended). Section 7(2)(b) provides that the debtor's apparent insolvency continues, if constituted under section 7(1)(b),(c) or (d), until the debtor becomes able to pay off the relevant debts. Section 16(7)(b) seems to go further than section 7(2)(b) which it restates, in that it provides for more situations in which a debtor's apparent insolvency will end when the debts are paid off.

The drafter has explained that the issue in both cases arises as a result of the implementation of recommendations 4 and 5 of the Scottish Law Commission's report on the Consolidation of Bankruptcy Legislation. Recommendations 4 and 5 were implemented by the Bankruptcy (Scotland) Act 2014 ("the 2014 Act") amending the 1985 Act. When these recommendations were implemented, the need for consequential amendments to sections 7(4) and 7(2)(b) of the 1985 Act was lost sight of.

Recommendations 4 and 5 make no express mention of these consequential amendments, and these changes could therefore arguably fall outside of the scope of the consolidation and this Bill. The drafter has identified that an alternative route to achieve these changes, would be to introduce an order under the ancillary provisions in section 55 of the 2014 Act. This order would make the necessary consequential amendment to the 1985 Act which would then flow through into the consolidation Bill. In evidence you detailed it would be possible to make such an order, in time to coincide with the progress of the Bill.

The Committee would be grateful for further clarification of the Scottish Government's thoughts on this issue, and whether the required consequential amendments will be progressed through a section 55 order under the 2014 Act. We note that, were such an order brought into force on or before the coming into force of the Act resulting from this Bill, no change to the Bill would be required.

I would be grateful if you were able to email your response to the Delegated Powers and Law Reform Committee mailbox; [DPLR.Committee@scottish.parliament.uk](mailto:DPLR.Committee@scottish.parliament.uk) by **5pm on Monday 14 December 2015**.

Deborah Cook  
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