



The Scottish Parliament  
Pàrlamaid na h-Alba

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8 December 2015

### **Bankruptcy (Scotland) Bill: Parts 15 to 18 and Schedules**

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 8 December and seeks an explanation of the following matters:

*Part 16*  
*Section 200(3)(a)*

2. Section 200(3)(a) of the Bill derives from section 1A(1)(c)(i) of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”). In section 1A(1)(c)(i), the words “of which particulars have been registered in the register of insolvencies during the year to which the report relates” appear to apply to both “the state of all sequestrations” and to “the winding up and receivership of business associations”.

3. This is not the case in section 200(3)(a), where the drafting suggests that the words “of which particulars have been registered in the register of insolvencies during the year to which the report relates” apply only to “the winding up and receivership of business associations”.

4. It appears that this difference may have arisen as a result of formatting changes made during the consolidation of this section.

5. **The Committee draws this to the drafter’s attention.**

*Section 200(5)(a)*

6. Section 200(5)(a) of the Bill derives from section 1A(3)(a) of the 1985 Act. Section 1A(3)(a) provides that a matter must be reported where the Accountant in Bankruptcy (“AiB”) has reasonable grounds to suspect that an offence has been committed by a person mentioned in subsection (1)(a) *in the performance of his functions under this Act or any other enactment or any rule of law*. This wording is not restated in section 200(5)(a) of the Bill.

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

**Why the words “in the performance of his functions under this Act or any other enactment or any rule of law” have not been restated in section 200(5)(a) of the Bill?**

**What effect is this considered to have on the meaning of that section?**

29. It is also noted that the phrase “where AiB has reasonable grounds to *suspect* that an offence has been committed” in section 1A(3) of the 1985 Act has been changed to “where AiB has reasonable grounds to *suppose* that an offence has been committed” in section 200(5) of the Bill.

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

**Why the word “suspect” in section 1A(3) of the 1985 Act has been changed to “suppose” in section 200(5) of the Bill?**

**What effect is this considered to have on the meaning of that section?**

*Part 17*

*Section 206*

7. Section 206 of the Bill derives from section 60 of the 1985 Act and relates to liabilities of co-obligants. The definition of “co-obligant” is not restated in section 206 of the Bill, and throughout section 206 the word “obligant” has been used in place of “co-obligant” where that word occurs in section 60 of the 1985 Act. There is one exception at subsection (5) where the word “co-obligant” has been retained.

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

**Why in section 206, one reference to “co-obligant” is retained (see subsection (5)) while the other such references are restated as “obligant”?**

**Is there any reason for this difference in terminology?**

*Section 223(2)*

9. Section 223(2) provides that a disqualification provision is a provision which disqualifies (whether permanently or temporarily) a debtor from holding a relevant office.

10. The equivalent section of the 1985 Act (section 71B) provides that a disqualification provision is a provision which disqualifies (whether permanently or temporarily *and whether absolutely or conditionally*) a debtor from holding a relevant office. These words are not restated in the Bill.

**11. The Committee asks the drafter why the words “and whether absolutely or conditionally” have not been restated in section 223(2) of the Bill?**

*Schedule 1  
Paragraph 5(4)*

12. Paragraph 5(4) substitutes a modified section 116(2) of the Bill to apply in certain circumstances. New section 116(2)(b) provides that the debtor must provide a financial statement *within 6 months* beginning with the day on which a statement is given under new section 116(2)(a).

13. The equivalent provision of the 1985 Act (Schedule A1, paragraph 5(4)) provides that the debtor must provide a statement *on the expiry of the period of 6 months* beginning with the day on which the statement is given under new section 116(2)(a).

**14. 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 paragraph 5(4) of Schedule 1 to the Bill?**

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

*Schedule 3  
Paragraph 10(3)*

15. There appears to be a small typo, in that the word “or” in line 4 should be “of”.

**16. The Committee draws this matter to the drafter’s attention.**

*Schedule 5  
Paragraph 27*

17. It appears that the reference in paragraph 27 to “section 129” should be to “section 127”.

**18. The Committee draws this matter to the drafter’s attention.**

*Schedule 7*

19. It is noted that the words “*or receives payment in respect of an attached article upon its redemption*” in paragraph 24(3) of Schedule 7 to the 1985 Act have not been restated in paragraph 1(4) of Schedule 7 to the Bill.

20. It is also noted that paragraph 24(7) of Schedule 7 to the 1985 Act has not been restated in Schedule 7 of the Bill.

21. **The Committee asks the drafter why:**

- a. **the words “or receives payment in respect of an attached article upon its redemption” in paragraph 24(3) of Schedule 7 to the 1985 Act; and**
- b. **paragraph 24(7) of Schedule 7 to the 1985 Act have not been restated in Schedule 7 to the Bill?**

*Schedule 8  
Paragraph 27*

22. It appears that the reference at paragraph 27 to the “Further and Higher Education (Scotland) Act 2013” should be to the “Further and Higher Education (Scotland) Act 2005”.

23. **The Committee draws this matter to the drafter’s attention.**

*Schedule 9  
Part 2*

24. Part 2 of Schedule 9 lists the enactments to be revoked by the Bill. Regulation 45 of the Debt Arrangement Scheme (Scotland) Regulations 2011 is listed. However, regulation 45 has been revoked by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014.

25. **The Committee draws this matter to the drafter’s attention.**

*Use of “or”*

26. It is noted that an “or” has been inserted into the following delegated powers provisions in Parts 15 to 18 (and Schedules):

- Section 223(6), between subsections (a) and (b);
- Section 224(1), between subsections (b) and (c);
- Schedule 1, paragraph 2(7), between subsections (a) and (b)

27. The Committee has noted in previous correspondence that an “or” has also been inserted into the following delegated powers provisions in earlier Parts of the Bill:

- Section 89(2), between subsections (c) and (d)
- Section 103(4), between subsections (a) and (b)
- Section 106(4), between subsections (a) and (b)

28. **The Committee seeks confirmation from the drafter that the “or” inserted into the delegated powers provisions referred to at paragraphs 26 and 27 will be removed from the Bill.**

29. Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by **10am on Monday 14 December**.

**Deborah Cook**  
**Assistant Clerk to the Committee**