



The Scottish Parliament  
Pàrlamaid na h-Alba

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### **Bankruptcy (Scotland) Bill: Parts 5-8**

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 24 November and seeks an explanation of the following matters:

#### *Part 5*

##### *Section 78(5)*

2. Section 78(5) deals with the exercise by the trustee of any power conferred on the trustee by the Bill, in respect of any heritable estate vested in the trustee by virtue of that person's appointment.

3. **The Committee asks the drafter to consider whether replacing the words "that person's" with the words "the trustee's" in section 78(5) would enhance the clarity of the provision.**

##### *Section 78(11)*

4. Section 78(11) allows a person claiming a right to any estate claimed by the trustee, to apply to the sheriff for that estate to be excluded from vesting in the trustee. This section also contains the phrase "a copy of the application being served on the trustee". This phrase appears to require the person making the application to the sheriff to also serve on the trustee a copy of the application.

5. **The Committee asks the drafter to consider whether making explicit the requirement in section 78(11) for the applicant to serve a copy of the application on the trustee, would enhance the clarity of the provision.**

*Section 86(8)*

6. Section 86(8) of the Bill is derived from section 32(6) of the Bankruptcy (Scotland) Act 1985 (as amended) (“the 1985 Act”). Section 32(6) provides that the trustee is not entitled to any remedy against a bank before the relevant notice is received “*whether or not the bank is aware of the sequestration*”. This wording is not restated in section 86(8) of the Bill.

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

**Why the words “whether or not the bank is aware of the sequestration” in section 32(6) of the 1985 Act are not restated in section 86(8) of the Bill?**

*Section 87(1)*

8. Section 87(1) of the Bill is derived from section 32(7) of the 1985 Act. Section 32(7) provides that the debtor must immediately notify the trustee of any assets acquired by the debtor on a relevant date, or of any other *substantial* change in the debtor’s financial circumstances. The word “substantial” is not restated in section 87(1) of the Bill.

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

**Why the word “substantial” in section 32(7) of the 1985 Act is not restated in section 87(1) of the Bill?**

*Part 6*

*Section 89(2)*

10. Section 89(2)(a) to (d) of the Bill is derived from section 5D(2)(a) to (d) of the 1985 Act. Section 89(2) of the Bill has an “or” at the end of subsection (c). This does not appear in the equivalent section 5D(2)(c) of the 1985 Act.

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

**Why the word “or” appears at the end of section 89(2)(c) of the Bill, when this is not the case in the equivalent section of the 1985 Act? And;**

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

*Section 89(3)*

12. It appears that a bracket is missing from the end of this section.

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

*Section 96(5)*

14. It appears that the word “payment” in section 96(5) should be “payments”.

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

*Part 7*

*Section 101(9) and section 103(7)*

16. Section 101(9) gives definitions of certain terms which are used in the “recovery provisions”. The reader is directed to section 103(7) for the definition of the “recovery provisions”. The “recovery provisions” (as this term is used in sections 101 and 103) is defined as meaning sections 101, 102 and 103.

17. It is suggested that it would be clearer for the reader if the definition of the “recovery provisions” were given in section 101, where this term is first used.

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

**Why the term the “recovery provisions” is defined in section 103, rather than in section 101 where this term is first used?**

*Section 103(2)(c)*

19. It appears that the word “arrangements” in section 103(2)(c) should be “arrangement”.

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

*Section 103(4) and section 106(4)*

21. Section 103(4) gives a power to the Secretary of State to make provision, by regulations, about the calculation and verification of (a) the value of the debtor’s rights under the pension arrangement *or* (b) the amount of the liabilities of the arrangement.

22. Section 103(4) of the Bill is derived from section 36C(4) of the 1985 Act. Section 36C(4) of the 1985 Act does not separate subsections (a) and (b) with an “or”.

23. Section 106(4) makes similar provision to section 103(4), in relation to excessive contributions in pension sharing cases.

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

**Why subsections (a) and (b) of sections 103(4) and 106(4) are separated by an “or”, when this is not the case in the equivalent sections of the 1985 Act? And;**

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

*Section 106(7) and section 103(7)*

25. Section 106(7) defines the “recovery provisions” (as that term is used in section 106) as sections 98, 99, 100, 105 and 106 of the Bill. Section 103(7) defines the “recovery provisions” (as that term is used in sections 101 and 103) as sections 101, 102 and 103 of the Bill.

26. It is considered that the use of the same term to refer to different sections of the Bill could detract from the clarity of the provisions as a whole.

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

**Why, in sections 106(7) and 103(7), is it considered appropriate to use the term the “recovery provisions” to refer to different sections of the Bill?**

28. Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by **10am on Monday 30 November**.

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