

Drafter's response as regards the explanations sought by the Delegated Powers and Law Reform Committee in their e-mail to him of 24th November with regard to Parts 5 to 8 of the Bankruptcy (Scotland) Bill

Paragraphs 2 and 3: the change suggested to section 78(5) of the current Bill would make no difference to the meaning of the provision. The trustee is the only person to whom "that person" could relate. The introduction of the expression is intended to improve readability: the repetition of the words "the trustee" becomes tedious and the subsection is thought to read rather better (and to be less likely to be derided by users) if a fourth such occurrence is avoided. (In the provision from which section 78(5) is derived, section 31(2) of the Bankruptcy (Scotland) Act 1985, the device of resorting to "him" and "his" meant that such repetition was avoided).

Paragraphs 4 and 5: section 78(5) of the current Bill is faithful to section 31(6) of the Bankruptcy (Scotland) Act 1985 in not putting it beyond doubt that it is the person claiming the right who is required to serve a copy of the application on the trustee. (It might conceivably instead be the sheriff clerk who is to do so). To eliminate the uncertainty would, it is felt, go beyond what is appropriate in this consolidation.

Paragraphs 6 and 7: it was not thought that the words "(whether or not the bank is aware of the sequestration)" affected the operation of section 86(8) of the current Bill (which restates paragraph (ia) of the proviso to section 32(6) of the Bankruptcy (Scotland) Act 1985) in any practical way and in the interests of brevity they were omitted. On reflection that probably went too far and therefore it seems appropriate to reintroduce them at the appropriate place in the Bill.

Paragraphs 8 and 9: the Committee are entirely correct in saying that section 87(1) of the current Bill should (restating section 32(1) of the Bankruptcy (Scotland) Act 1985) speak of "any other substantial change" rather than of "any other change" in the debtor's financial circumstances. The omission of the word "substantial" is inadvertent. It requires to be added at the appropriate place in the Bill.

Paragraphs 10 and 11: an attempt is made in the current Bill at achieving consistency in the use of conjunctions between paragraphs, and sub-paragraphs, of sections. The style adopted is that almost universally followed in the Bankruptcy (Scotland) Act 1985 itself: the use of "and" or "or" but (on the plain English analogy of "Tom, Dick and/or Harry") only between the final two paragraphs in a sequence of three or more paragraphs or between the final two sub-paragraphs in a sequence of three or more sub-paragraphs. Section 89 of the current Bill restates section 5D of the 1985 Act which was inserted by section 3(1) of the Bankruptcy and Debt Advice (Scotland) Act 2014.

The powers restated are regulation making powers. Especially given the provisions of section 7(1) of the Interpretation and Legislative Reform (Scotland) Act 2010 (that is to say: "a power conferred by an Act of the Scottish Parliament or a Scottish instrument may be exercised from time to time") the insertion, for stylistic consistency, of an "or" between the provisions of the current Bill equivalent to paragraphs (c) and (d) of section 5D(2) of the 1985 Act (that is to say, between paragraphs (c) and (d) of section 89(2)) can have no effect on meaning.

Paragraphs 12 and 13: it is agreed that there should be a closing bracket at the end of section 89(3) of the current Bill. The drafter is grateful to the Committee for drawing attention to the need for it.

Paragraphs 14 and 15: it is also agreed that in section 96(5) of the current Bill “payment”, where it occurs for the second time, could (as in section 32G(5) of the Bankruptcy (Scotland) Act 1985) read “payments”. It is considered that in the context of the remainder of the section the meaning is clear and does not admit of any difference in effect but the drafter would be content to change “payment” to “payments” if the Committee would prefer that to be done.

Paragraphs 16 to 18 and 25 to 27: the Welfare Reform and Pensions Act 1999 restated and re-structured, both for Scotland and for other parts of the United Kingdom, such primary legislation as relates to pensions. For Scotland very substantial changes were made to the Bankruptcy (Scotland) Act 1985. Section 16 of the 1999 Act introduced what are, in the current Bill, sections 101 to 103 and schedule 12 of that Act introduced what are, in the current Bill, sections 104 to 107. (Corresponding changes were made to the Insolvency Act 1986). Although of course some changes were needed to take account of such things as the re-numbering of cross-references and the detail of how the 1985 Act is re-worked in the current Bill, sections 101 to 107 follow very closely the 1999 Act restatement: not least with regard to such provision as is made regarding terminology (and especially regarding the use of the expression “the recovery provisions” and the fact that the expression is assigned different meanings according to which set of sections it occurs in). Except in so far as sections 101 to 107 of the current Bill might nevertheless be considered not to restate accurately sections 36A to 36F of the Bankruptcy (Scotland) Act 1985, the drafter would argue against making any further changes: not least as regards terminology.

Paragraphs 19 and 20: it is agreed that in section 103(2)(c) of the current Bill “arrangements” should (as in section 36C(2)(c) of the Bankruptcy (Scotland) Act 1985) read “arrangement”. The drafter is grateful to the Committee for drawing attention to what was a typographical error.

Paragraphs 21 to 24: the Committee are referred to the answer given above in relation to paragraphs 10 and 11.

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