



**THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS' (R3)
SCOTTISH TECHNICAL COMMITTEE**

**RESPONSE TO THE CALL FOR EVIDENCE ON THE BANKRUPTCY
(SCOTLAND) BILL BY THE SCOTTISH PARLIAMENT DELEGATED POWERS
AND LAW REFORM COMMITTEE**



COMMENTS FROM THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS' (R3) SCOTTISH TECHNICAL COMMITTEE

INTRODUCTION

1. R3, the Association of Business Recovery Professionals, is the leading professional association for insolvency, business recovery and turnaround specialists in the UK. It promotes best practice for professionals working with financially troubled individuals and businesses. It has UK-wide representation and debates key issues facing the profession. Most insolvency practitioners (IPs) operating in Scotland are members.
2. The Association's Scottish Technical Committee ("STC") welcomes the opportunity to respond to the Call for Evidence on the Bankruptcy (Scotland) Bill by the Scottish Parliament's Delegated Powers and Legal Reform Committee. The majority of our comments relate mainly to the positioning of certain provisions.

RESPONSE TO QUESTIONS

3. We welcome the Bill to consolidate bankruptcy law in Scotland.
4. Bankruptcy law as it currently exists is unwieldy and difficult to follow in practice and bringing together the plethora of changes which have been made to the bankruptcy legislation in Scotland will produce coherence and make the bankruptcy legislation easier and more efficient to use. It also would be easier to make any future legislative changes to a consolidated Bill than to legislation as it presently stands.
5. We note that the Debt Arrangement Scheme (DAS) although part of Scotland's Financial Health Service has not been included. At the present time although there are elements common to all the financial rehabilitation processes (e.g. financial advice, common financial tool, pre-application moratorium), we agree DAS should remain separate until Bankruptcy law has had an opportunity to bed down and there is sufficient Parliamentary time to allow any further changes to be considered.
6. In general we agree broadly with the approach that has been taken. As set out below, we consider that the Bill might benefit with some re-ordering and removal of inappropriate abbreviations. We also consider that well used terms, although they may be perceived as 'archaic', should be retained as they are well understood.

GENERAL COMMENTS

7. We suggest that there might be merit in the interpretation section being at the beginning rather than near the end and that consideration should be given to including within it other definitions which currently appear elsewhere, for example, in s.193.
8. It would be helpful for consistency of language to be used. For example "forthwith" is used in some instances and in others it has been replaced with synonyms e.g. "without delay". A lack of consistency may be perceived as a change in meaning.

9. The cross-referencing at s.79(2) could be simplified by introducing a separate sub-section to allow the provision to be properly integrated into the section.
10. The new style of adopting abbreviations in certain circumstances we believe could lead to confusion. S.14(7) has 'OC' for another creditor (which we suggest may be a typographical error); s.46 and s.47 employ 'C' for creditor; s.63 has 'RT' and 'OT' for replacement trustee and original trustee respectively. There are further instances where abbreviations are used in the Bill. We consider that some well known abbreviations such as AiB and PTD are, however, acceptable.
11. Taking account of the chronology of the bankruptcy process we put forward the following suggestions for re-positioning of some provisions:
 - Section 16 – 'Meaning of apparent insolvency' and Part 15 – "Moratorium on Diligence" might sit better before Part 1 – "Application or Petition for Sequestration"
 - We suggest a re-ordering of Part 7 and Part 8 (i.e. Part 7 should be 'Administration of Estate by Trustee' and Part 8 – 'Safeguarding interests of creditors')
 - The requirement for the debtor to co-operate with the trustee is fundamental in the process and a failure to comply constitutes an offence. As such we suggest that s.215 together with the provisions under Part 9 are combined under a proposed heading "Debtor's responsibilities" or something similar
 - Part 13 – Bankruptcy Restrictions Orders and Interim Bankruptcy Restriction Orders ideally should follow either the suggested 'Debtor's responsibilities' section (Part 9) or should come straight after the section on debtor's discharge (Part 11)
 - Some of the sections under Part 17 – Miscellaneous and Part 18 – General might sit better elsewhere. For example s.229 and s.230 could be separate provisions following the suggested Interpretations section at the beginning of the Bill
 - Section 206 – liabilities and rights of co-obligants might better be included under Part 10
 - Section 209 – extortionate credit transactions could be included under Part 7
 - Section 222 – Supplies by utilities could be included under Part 8 (Contractual powers and money received)
 - Section 231 could be included at Part 5 – Vesting etc.
 - Section 237 – Commencement should follow the Interpretations section

Chair
R3 Scottish Technical Committee

30 November 2015