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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Bankruptcy and Diligence (Scotland) Bill (as amended at Stage 2)



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meeting on 30 April 2024, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Bankruptcy and Diligence (Scotland) Bill following amendments made at [Stage 2](#).
2. This Scottish Government Bill was introduced on 27 April 2023. The lead committee is the Economy and Fair Work Committee.

Overview of the Bill

3. The Bill's stated aim is to strengthen and update the law relating to bankruptcy and diligence by implementing various stakeholder-led recommendations.
4. The Bill confers seven powers to make subordinate legislation on the Scottish Ministers. The Committee considered the delegated powers in the Bill at Stage 1 at its meetings on 6 and 20 June 2023 and issued its [report](#) on 22 June 2023.
5. The report notes that the Committee was content with the delegated powers in the Bill but highlighted the power in section 1(1) to the lead committee on the basis that the regulations to be made thereunder would merit close scrutiny.
6. The Bill completed Stage 2 on 20 March 2024. One new delegated power was added at Stage 2 and the Scottish Government has lodged a Supplementary Delegated Powers Memorandum which deals with this.
7. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of powers

Section 5B: Failure of debtor to co-operate with trustee in sequestration

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Revised or new power: new

Provision

8. Section 5B will insert a new section 147A in the Bankruptcy (Scotland) Act 2016 ("the 2016 Act"). Section 147A provides a process for a trustee in a sequestration to apply for authority to resign from office and to transfer a sequestration to the Accountant in Bankruptcy where the debtor has failed to cooperate with the trustee. Section 147A(3) provides that an application by the trustee for authority to resign must be in the prescribed form and subsection 147A(5) provides that an intention to resign notice (which must be issued by the trustee to both the debtor and all known creditors before an application is made) must also be in the prescribed form. Section 147A(6) provides that, if the Accountant in Bankruptcy grants the trustee's application, notice must be given to the trustee in the prescribed form.
9. The term "prescribed" as used in three places in the new section 147A will be caught by the definition of that term in section 228 of the 2016 Act, meaning that the three new forms will be prescribed by regulations made under that section. The Regulations will be subject to the negative procedure under section 225 of the 2016 Act.

Committee consideration

10. The form and manner in which information is to be provided are administrative matters and it is appropriate for this level of detail to be set out in regulations.

11. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

